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MODERN INVESTIGATION OF TITLE.

BEING A SUPPLEMENT TO

"INVESTIGATION OF TITLE"

(FOURTH EDITION)

EMBODYING THE PROPERTY ACTS, 1922—25.

WITH PRECEDENTS OF REQUISITIONS.

BY

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OF THE INNER TEMPLE, BARRISTER-AT-LAW.

"No one's misfortune is so much slighted by the Courts as his, who buys a thing in the realty and does not look into the title."—LORD ST. LEONARDS.

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PREFACE.

As the title page implies, this book is intended to be a Supplement to the writer's "Investigation of Title" (Fourth Edition). For many years to come only a comparatively small portion of the Abstract of Title will relate to the period after 1925, but this small portion being the most recent, will be the most important part of the abstract. On the 1st of January, 1926, the new Property Acts came into operation—the Law of Property Act, 1922, and the Law of Property (Amendment) Act, 1924 (so far as unrepealed), immediately before the Law of Property Act, 1925, and the Land Registration Act, 1925, immediately after the Law of Property Act, 1925, the Settled Land Act, 1925, the Land Charges Act, 1925, the Trustee Act, 1925, and the Administration of Estates Act, 1925. The effect of these Acts, or some of them on the date mentioned, has to be borne in mind in perusing every abstract which starts before 1926, and finishes after 1925. It is hoped that this supplement will, in the majority of cases, save reference to the original statutes during the perusal of such abstracts both for the purpose of ascertaining the effect of the Acts on the date in

question and also for the purpose of ascertaining the new law applicable to the title after 1925.

It need hardly be said that this book is not intended as a complete guide to the new Acts. Mere re-enactments of the old law have in the majority of instances not been even referred to, while provisions, however important, having no relation to the subject of Investigation of Title have, of course, been omitted.

The law has, as in "Investigation of Title," been put in the form of an Alphabetical Digest, and Precedents of Requisitions, as in the original book, have been added to each subject in the Digest.

THOROLD GOSSET.

CAMBRIDGE,
January, 1926.

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MODERN INVESTIGATION OF TITLE.

INTRODUCTION.

The unrepealed portions of the Law of Property Act, 1922, and the Law of Property (Amendment) Act, 1924, together with the following eight Acts:—

The Law of Property Act, 1925;
The Settled Land Act, 1925;
The Trustee Act, 1925;
The Administration of Estates Act, 1925;
The Land Charges Act, 1925;
The Land Registration Act, 1925;
The University and College Estates Act, 1925;
The Supreme Court of Judicature (Consolidation) Act, 1925,

came into operation on the 1st January, 1926. The last eight Acts are Consolidation Acts and embody the provisions of former statutes as modified by the Acts of 1922 and 1924. The net result is a mighty maze not without a plan. Broadly, the plan is to make the legal estate the basis of the new conveyancing, while preserving all the existing methods of disposing of the beneficial interest in land. Punctilious care is taken to preserve anything that might be regarded as of the nature of a vested right, thus the beneficial interest in the real estate of a lunatic who dies without recovering his testamentary capacity still devolves upon the heir-at-law of the last purchaser according to the old law. A second mortgagee whose mortgage

is converted by the Law of Property Act, 1925, from an equitable mortgage to a legal mortgage is not to obtain any benefit as against a *bonâ fide* purchaser by reason of such conversion, unless he registers his mortgage or obtains possession of the title deeds. Many of the provisions and exceptions become intelligible only when this object is borne in mind. An elaborate system of registration is introduced that will make searches a necessity on every purchase or mortgage, but in scarcely any case will anyone suffer by not registering existing charges until there has been a transfer *inter vivos*, and even then a year's grace is usually given.

One feels that with little hardship more might have been done in the interests of simplicity, and that such unwanted progeny of ancient legal fictions as base fees might well have been sacrificed altogether instead of being kept alive in equity. An alternative method of assimilating the law of personalty to that of realty has in this case been adopted, and interests in tail, in tail male, in tail female and in tail special may after 1925 be created by way of trust in any property real or personal, with the result that interests corresponding to base fees may now exist in personal property.

Many cobwebs have been swept away. Thus the useless formality of enrolment at the Central Office of disentailing assurances and conveyances to charitable uses has been done away with. Lands and all interests therein have been rendered incapable of being conveyed by feoffment or by bargain and sale. Acknowledgments by married women have been abolished. So far as the legal estate is concerned, life estates, estates tail, base and conditional fees and undivided shares disappear. Copyholds are enfranchised, but manorial incidents will continue for some years, although escheat and customary modes of descent are immediately abolished. The Statute of Uses is repealed and all the conveyancing devises which depended for their validity on this famous old Act go with it. The rule in *Shelley's case* is a rule no longer, and words of limitation of a fee simple estate cease to be necessary.

But for thirty years and upwards the conveyancer will have to be acquainted with the old law as well as the new. Surrenders of and admissions to copyholds, springing and shifting uses, contingent remainders, undivided shares, acknowledgments by married women, enrolled disentailing deeds—in short, the ghosts of all our troublesome old friends will still appear in abstracts of title and will haunt us all our lives. Even apart from this, it is necessary to know the old law, as the new law is quite unintelligible without reference to the old law, which has been used as a foundation upon which the new law has been built. The new wine has been poured into the old bottles.

The work has been done very cunningly, and the old bottles have been strengthened accordingly, parts of them have been removed altogether and replaced by new material, but the old bottles have not been replaced by new ones. The fundamental principles, both of common law and equity, remain unaffected. Indeed, in many respects the new legislation is a reversion to fundamental common law principles. We have become so used, both under the Statute of Uses and under such legislation as the Settled Land Acts, 1882 to 1890, to a person conveying what was not in fact his to convey, that we hardly perceived the anomalous character of such conveyances. Under the Settled Land Act, 1925, the "tenant for life" will merely convey the legal estate which is already vested in him, the same legal estate which, if he did not convey it, would on his death pass to his legal personal representatives and be by them conveyed to the next "tenant for life."

In the case where the title is registered, the proprietor who can make a valid title to a purchaser is actually the person who has the legal estate. So far as the legal estate is concerned, with very few exceptions, it will be the person who has it, and he alone, who is enabled to convey it. It might happen before 1926 that land was vested in trustees for sale and a tenant for life had obtained an order of the Court enabling him to exercise his powers under the Settled Land Acts, but after 1925 in such a case the tenant

for life must exercise such a power only in the names and on behalf of the trustees (*a*).

The common law principle that a man can give no better title than he has himself has never applied to equitable interests. Such interests theoretically only arise in the conscience of the legal owner. So that, although a trustee may be bound by an express trust to give a beneficiary the full benefit of an estate of which the trustee is legal owner, yet if he transfers that estate to a purchaser in good faith for valuable consideration without notice of the trust, the purchaser takes free from the trust and thus gets a better title than the trustee. This fundamental principle, which is merely an instance of the maxim, "Where the equities are equal, the law prevails," will still apply. A tenant in fee simple who in consequence of a settlement has become a tenant for life, can make a good title to a purchaser in the elaborate way provided by the Settled Land Act, 1925, but until a vesting instrument has been executed he can also in fraud of the settlement make an equally good title to a *bonâ fide* purchaser for value who knows nothing whatever about the settlement by a simple conveyance for which the tenant for life himself takes the purchase-money (*b*). This illustration is merely for the sake of showing how the old principles still apply. It is not for a moment suggested that such a procedure would be a proper one to adopt, even if it was intended that the purchase-money should in fact (unknown to the purchaser) be handed to the trustees for the purposes of the Settled Land Act, 1925, named in the trust instrument. After a vesting instrument has been executed, until the discharge of the trustees, any disposition in fraud of the settlement would be absolutely void (*c*).

That fundamental principles and also equitable rights are not intended to be altered unless the contrary is clearly stated may be taken as two cues in reading the new Acts. That difficulties abound and that questions will arise upon

(*a*) Law of Property Act, 1925, s. 29.
(*b*) Settled Land Act, 1925, s. 13.
(*c*) *Ibid.* s. 18 (1).

the interpretation of many of the provisions is certain. That the Acts have been made quite unnecessarily complicated is the opinion of the writer. That, considering the complications which have been introduced, the Acts have been cleverly drafted must, I think, be the opinion of everyone who has endeavoured to piece together what appears to be the most complex legislative effort that has ever been attempted in this country.

Particular attention is drawn to the subject of searches. Before 1926 they might be omitted with comparative impunity. After 1925 such a course will rarely be safe, as a purchaser who does not search will be treated as having notice of what he might have found on searching, and the number of incumbrances which can be registered as land charges is greatly increased.

ALPHABETICAL DIGEST.

ABSTRACTS OF TITLE.

The question what documents ought to be abstracted both before 1926 and after 1925 is of importance to every solicitor.

Though it is a safe rule to abstract everything, it is hardly a practical one, as in most titles there are documents which are of no concern whatever to a purchaser or mortgagee, and the abstracting of them merely involves useless clerical labour to both parties. As the rules are altered after 1925, the best plan is to state separately the documents which need not be abstracted before 1926 and then show how the list may be modified after 1925.

Documents before 1926 *which need not be abstracted.*

(1) Settlements of proceeds of sale and other equitable interests which can be overreached by a trust for sale. Such settlements are frequently purposely made by separate deeds to keep the trusts off the title.

(2) Settlements and other documents declaring the trusts on which mortgage money is held. The practice of keeping mortgage trusts off the title has been indirectly sanctioned by the Conveyancing Act, 1911, which provided that a 10*s.* stamp on a transfer of mortgage, whether adjudicated or not, does not give notice of a trust (*a*), but this provision did not get over the difficulty of showing that the document was properly stamped with a 10*s.* stamp in cases where it had not been adjudicated without disclosing the trust.

(*a*) Sect. 13, now replaced by the Law of Property Act, 1925, s. 112.

(3) Documents creating equitable interests overridden by a mortgagee in the exercise of his power of sale. On a purchase from a first legal mortgagee, the purchaser is not concerned with any second mortgage that may have been made either to the same or to a different mortgagee.

(4) Documents creating equitable interests overridden by the exercise of the power of a tenant for life under the Settled Land Acts.

(5) Expired leases and tenancy agreements.

(6) Contracts for sale where the sale has been completed.

(7) Equitable charges under hand only which have been paid off and cannot affect a purchaser without notice.

It is sometimes suggested that a second or subsequent formal mortgage is nothing more than an equitable charge and need not therefore be abstracted, even when a mortgagor is selling. It is true that if the first mortgage is subsisting and the legal estate is thereby conveyed, and the second or subsequent mortgage does not conceal the first mortgage or does not contain a recital of seisin which might operate by estoppel, the second mortgagee gets nothing more than an equitable estate, but seeing that the question whether or not the second or subsequent mortgage affects a purchaser without notice is to some extent hypothetical, and that under the new legislation equitable mortgagees not being merely chargees obtain a legal estate, solicitors should not take the responsibility of suppressing equitable mortgages.

(8) Documents which show that the ostensible owner is not really the true owner.

In some cases conveyances are taken by trustees or a trustee, and the fact that they are trustees or that he is a trustee has been purposely kept off the title. The practice, unlike the similar case of mortgages or conveyances in trust for sale, has nothing to recommend it. If the ostensible owner dies the purchaser will want to know that death duties have been paid; if he lives to convey the property to a purchaser he will be expected to give the usual beneficial

owner covenants, a responsibility that a mere trustee should not be asked to take. Under the new legislation all outstanding legal estates are on 1st January, 1926, got in and vested in the equitable owner, so that the true owner in that case gets the legal estate, and his true ownership ought certainly not to be concealed; but in such cases, as where, with a view to keeping a partnership deed off the title, the property has been conveyed to some or all the partners as joint tenants and the legal estate has not been diverted on 1st January, 1926, the concealing of the true equitable ownership is perhaps permissible.

After 1925, where a title is shown to a legal estate in land, it is to be deemed not necessary or proper to include in the abstract of title an instrument relating only to interests or powers which will be overreached by the conveyance of the estate to which title is being shown, but this does not affect the liability of any person to disclose an equitable interest or power which will not be so overreached or to furnish an abstract of any instrument creating or affecting the same (*a*).

No alteration has been made with regard to the documents previously numbered (1) to (6), inclusive.

With regard to (7), there appears after 1925 to be no occasion to abstract documents which can only take effect in equity and which, in consequence of the purchaser having no notice, will be overreached by the conveyance of the legal estate; but if any such documents or the charges thereby created are registered under the Land Charges Act, 1925, or for any other reason the purchaser will be deemed to have notice of them and will consequently take subject to them, they certainly ought to be abstracted. Equitable mortgages created before 1926 on the 1st January, 1926, become automatically legal mortgages, and all such, except in the case where the sale is under a power which overrides them, should be abstracted. It is true that as against a

(*a*) Law of Property Act, 1925, s. 10 (1).

purchaser in good faith without notice of the mortgage the equitable mortgagee will obtain no benefit by reason of his mortgage being converted into a legal mortgage unless it is protected by a deposit of documents or by registration as a land charge (*b*), but the solicitor delivering an abstract cannot know whether or not the equitable mortgage will be registered as a land charge before completion.

With regard to (8), any document which shows or tends to show that on the 1st January, 1926, the ostensible owner was not the real owner ought certainly to be abstracted, but where the document merely shows that after 1926 there is an otherwise undisclosed equitable owner whose estate or interest will be overridden by the conveyance of the legal owner, there does not appear to be any obligation to disclose the real owner.

The net result appears to be that the documents which ought to be abstracted after 1925 are not much fewer in number than those which should be abstracted before 1926, but a study of the five specimen abstracts which are in the Sixth Schedule to the Law of Property Act, 1925, will show that in consequence of the increase in number of the interests which after 1925 can be overridden, abstracts can as a rule be shortened, though a good deal of the shortening is a consequence of the omission of the immaterial parts of the material documents rather than of the omission of the documents themselves.

It must always be remembered that any person disposing of property or any interest therein for money or money's worth to a purchaser or the solicitor or other agent of such person who—

(1) conceals from the purchaser any instrument or incumbrance material to the title, or

(2) falsifies any pedigree upon which the title may depend,

with intent in either of such cases to defraud is guilty of a misdemeanour punishable by fine or two years' imprison-

(*b*) Law of Property Act, 1925, 1st Schedule, Part VII., para. 6, and Part VIII., para. 5.

ment (*c*); but an intent to defraud is essential to the offence. Any person or his solicitor or agent is also liable to an action for damages by the purchaser or the persons claiming under him for any loss sustained by reason of such concealment or falsification. No intent to defraud is necessary in this case (*d*). This liability has the natural effect of making solicitors err on the safe side, and it cannot be said that they are unwise to do so.

Requisitions.

1. *Were any equitable mortgages which are not disclosed by the abstract in existence on the* 1*st January,* 1926? *If so, all such must be abstracted.*

2. *The abstract as delivered contains abstracts of various instruments relating to interests which will be overreached by the conveyance. It is not accordingly framed in the manner directed by the Law of Property Act,* 1925, *and is returned herewith for a proper abstract to be delivered. The right of making requisitions on such proper abstract is reserved.*

BANKRUPTCY.

A purchaser of a legal estate for money or money's worth without notice of an available act of bankruptcy is not bound by any petition in bankruptcy filed after 1925 unless it is registered as a pending action (*e*). Express notice of an unregistered bankruptcy petition is not in itself notice or evidence of any act of bankruptcy therein alleged (*f*).

The title of a trustee in bankruptcy acquired after 1925 is void against such a purchaser claiming under a conveyance made after the date of registration of the petition in bankruptcy as a pending action, unless at the date of the

(*c*) Law of Property Act, 1925, s. 183 (1).
(*d*) *Ibid.* s. 183 (2).
(*e*) Land Charges Act, 1925, ss. 2 (1) and 3 (1).
(*f*) *Ibid.* s. 3 (2).

conveyance either the registration of the petition as a pending action is still in force or the receiving order is registered as an order affecting land (*g*). Every receiving order is also void against such a purchaser unless the receiving order is registered (*h*).

It would seem, however, that express notice of a receiving order and *a fortiori* of an actual adjudication must be notice of an available act of bankruptcy. No protection is afforded by the new legislation to a purchaser with notice of an available act of bankruptcy or to a purchaser who does not obtain the legal estate. Conveyances and assignments by persons who have committed an act of bankruptcy made before the date of the receiving order to persons having at the time no notice of an available act of bankruptcy and dealing *bonâ fide* for valuable consideration are protected by the Bankruptcy Act, 1914 (*i*).

It is conceived that with regard to a bankrupt's after-acquired property all transactions of a bankrupt after his bankruptcy with any person dealing with him *bonâ fide* and for value are still valid against the trustee until the trustee intervenes (*j*), but as the registration of any matters under the Land Charges Act, 1925, in any register is deemed to constitute actual notice of the matter to all persons and for all purposes (*k*), it would not be safe to proceed in any case where either a petition or receiving order is found to be registered against the name of a vendor or mortgagor relying solely on the provisions of the Bankruptcy Act, 1914, s. 47, without making the fullest enquiries from the trustee.

Where the title is registered, no search for land charges otherwise than in the register kept in accordance with the Land Registration Act, 1925, is necessary.

The troublesome search at the Bankruptcy Court is in no case necessary for bankruptcies after 1925, but where there is any possibility that the vendor or a predecessor in

(*g*) Land Charges Act, 1925, s. 7 (2).
(*h*) *Ibid.* s. 7 (1).
(*i*) Sect. 45.
(*j*) Bankruptcy Act, 1914, s. 47.
(*k*) Law of Property Act, 1925, s. 198.

title has been bankrupt before 1926 search should still be made at the Bankruptcy Court.

Requisitions.

1. *A petition in bankruptcy has been registered as a* lis pendens *against the name of the vendor. Under these circumstances the purchaser cannot safely take a title from the vendor unless and until the petition is dismissed, and if a receiving order is made the Official Receiver or the trustee in bankruptcy must concur in the conveyance.*

2. *Can the vendor's solicitors state that the financial position of the vendor is sufficiently well known to make a search at the Bankruptcy Court before* 1926 *quite superfluous?*

BENEFICES.

An advowson is "land" within the meaning of the Settled Land Act, 1925 (*l*), the Trustee Act, 1925 (*m*), the Law of Property Act, 1925 (*n*), the Land Registration Act, 1925 (*o*), the Land Charges Act, 1925 (*p*), and the University and College Estates Act, 1925 (*q*).

After two vacancies in a benefice have occurred on or after the 14th of July, 1924, the right of patronage of the benefice will become incapable of sale; but this does not apply to sales of land to which rights of patronage are appendant or to assignments of patronage under the New Parishes Act (*r*). A right of patronage cannot be mortgaged on or after the 14th of July, 1924 (*s*).

(*l*) Sect. 117 (ix). (*m*) Sect. 68 (6).
(*n*) Sect. 205 (ix). (*o*) Sect. 3 (viii).
(*p*) Sect. 20 (6). (*q*) Sect. 43 (iv).
(*r*) The Benefices Act, 1898 (Amendment), Measure, 1923.
(*s*) *Ibid.* s. 4.

Requisitions.

1. *A list of presentations to the benefice whereof the right of patronage is sold with their respective dates must be supplied.*

2. *The mortgage to the vendor was made after the 14th July, 1924, and cannot therefore include the advowson. How is a title proposed to be made thereto?*

CHARITABLE TRUSTS.

The restriction of the number of trustees of land to four imposed by the Trustee Act, 1925, does not apply in the case of land vested in trustees for charitable, ecclesiastical or public purposes (*t*). All land vested in trustees for any such purposes is deemed to be settled land, and the trustees (without their being statutory owners) have all the powers conferred by the Settled Land Act, 1925, on a tenant for life and on the trustees of a settlement (*u*). The statute or other instrument creating the trust or under which it is administered is deemed the settlement, and except where the trust is created by a will coming into operation after 1925 no separate instrument for giving effect to the settlement is necessary (*u*).

The powers have to be exercised subject to the same consents and orders as before 1926 (*x*), and any conveyance of land held on charitable, ecclesiastical or public trusts must state that the land is held on such trusts, and a purchaser is bound to see that any requisite consents and orders have been obtained (*u*).

The jurisdiction of the Court, the Charity Commissioners and the Board of Education is not affected (*y*).

Where any trustees or a majority of trustees have power to transfer or create a legal estate, the estate must be trans-

(*t*) Trustee Act, 1925, s. 34 (3) (a).
(*u*) Settled Land Act, 1925, s. 29 (1).
(*x*) *Ibid.* s. 29 (2). (*y*) *Ibid.* s. 29 (3).

ferred or created by them in the names and on behalf of the persons (including the Official Trustee of Charity Lands) in whom the legal estate is vested (*z*).

Assurances of land or personal estate to be laid out in land for charitable uses or instruments declaring the charitable uses, where such uses are declared by a separate instrument, do not after 1925 require any particular attestation or enrolment in the Central Office, but in lieu thereof such assurances and instruments must be sent to the offices of the Charity Commissioners for the purpose of being recorded in their book within six months after their execution or within such extended time as the Commissioners may in any particular case allow (*a*). This does not apply to registered dispositions of registered land or to instruments required to be sent to the Board of Education (*b*).

Registered dispositions of registered land do not require any special attestation or enrolment (*c*).

Requisitions.

1. *Notwithstanding the power of sale purported to be given to the trustees, the consent of the Charity Commissioners is necessary to a sale by them and the requisite order must accordingly be obtained, a copy supplied to the purchaser and the original handed over on completion.*

2. *The names, addresses and descriptions of all the trustees must be supplied, as, although a majority are authorised to convey, they must do so in the names of the whole body in whom the legal estate is vested.*

(*z*) Settled Land Act, 1925, s. 29 (5).
(*a*) *Ibid.* s. 29 (4).
(*b*) The Education Act, 1921, s. 117.
(*c*) The Mortmain and Charitable Uses Act, 1888, s. 9.

CONDITIONS OF SALE.

Stipulations as to time or otherwise not deemed to be of the essence of the contract according to rules of equity are to be also construed and have effect at law in accordance with the same rules (*d*). A stipulation that a title shall be made with the concurrence of any person entitled to an equitable interest is void if a title can be made discharged from such concurrence under a trust for sale under the Law of Property Act, 1925, under the Settled Land Act, 1925, or any other statute (*e*).

A stipulation that a purchaser of a legal estate shall pay or contribute to the costs of or incidental to the following matters is void:—

(1) Obtaining a vesting order;
(2) The appointment of trustees of a settlement;
(3) The appointment of trustees of a conveyance on trust for sale; or
(4) The preparation, stamping or execution of a conveyance on trust for sale or of a vesting instrument for bringing into force the provisions of the Settled Land Act, 1925 (*f*).

A stipulation made after 1925 that an outstanding legal estate is to be traced or got in by or at the expense of a purchaser or that no objection shall be taken on account of an outstanding legal estate is void (*g*).

The sale of a mortgage term where the vendor has power to convey the fee simple, or in the case of leaseholds the leasehold reversion, is deemed to extend to the fee simple or leasehold reversion accordingly (*h*).

The sale of an equitable interest capable of subsisting as a legal estate where the vendor has power to vest such legal estate in himself or the purchaser or to require the same to be so vested is deemed to extend to the legal estate (*i*).

(*d*) Law of Property Act, 1925, s. 41.
(*e*) *Ibid.* s. 42 (1).
(*f*) *Ibid.* s. 42 (2).
(*g*) *Ibid.* s. 42 (3).
(*h*) *Ibid.* s. 42 (4) (i).
(*i*) *Ibid.* s. 42 (4) (ii).

The sale of an entailed interest in possession when the vendor has power to vest in himself or the purchaser the fee simple, or, in the case of leaseholds, the absolute interest in the term, is deemed to extend to the fee simple or absolute interest in the term (*k*).

A contract for the sale of an undivided share of land is to be treated as a contract for sale of a corresponding share of the proceeds of sale thereof (*l*).

In cases of compulsory purchase the title is to be made where possible apart from special reason without payment of the purchase-money into Court (*m*).

Where there is a registered pending action, annuity, writ, order, deed of arrangement or land charge which will not be overreached by the conveyance, the purchase may, notwithstanding any stipulation to the contrary, require the registration to be cancelled or that the person entitled to the equitable interest shall concur in the conveyance (*n*). This does not affect the right of any person to rescind the contract where the registration cannot be cancelled or the person entitled to the equitable interest refuses to concur (*o*).

After 1925 thirty years is substituted for forty years as the length of title which a purchaser may require under open contract (*p*).

Under a contract to sell a leasehold interest already created the purchaser cannot call for the title to the reversion, whether freehold (*q*) or leasehold (*r*).

Under a contract to grant a new lease the purchaser cannot call for the title to the freehold (*s*) or to any leasehold reversion expectant on the determination of any leasehold interest out of which the intended term is to be derived (*t*), but he can call for the title to a leasehold interest out of which the intended term is intended to be derived.

(*k*) Law of Property Act, 1925, s. 42 (4) (iii).
(*l*) *Ibid.* s. 42 (6).
(*m*) *Ibid.* s. 42 (7).
(*n*) *Ibid.* s. 43 (1).
(*o*) *Ibid.* s. 43 (2).
(*p*) *Ibid.* s. 44.
(*q*) *Ibid.* s. 44 (2).
(*r*) *Ibid.* s. 44 (3).
(*s*) *Ibid.* s. 44 (2).
(*t*) *Ibid.* s. 44 (4).

A purchaser of a leasehold interest or a lessee is not under a contract made after 1925 deemed to be affected with notice of anything he might have discovered had he insisted on a longer title than he is entitled to under an open contract (*u*). This reverses the well-known case of *Patman* v. *Harland* (*x*).

Where copyholds have been enfranchised the purchaser cannot call for the lord's title (*y*). Where manorial incidents have been extinguished a purchaser cannot call for the title of the lord entering into the compensation agreement or giving a receipt for the compensation money, and he will not be affected by notice of what he might have discovered by so doing (*z*). No purchaser is affected by notice of matters prior to the period of title fixed by the Law of Property Act, 1925, or any other statute or by any rule of law, which he might have discovered had he investigated the earlier title, unless he does make such investigation or makes enquiries into the earlier title (*a*). The preliminary agreement for a lease is not to form part of the title to a lease (*b*).

A purchaser may (apart, of course, from special stipulation to the contrary) require the production and an abstract or copy of:—

(1) Any power of attorney under which an abstracted document is executed.

(2) Any document creating or disposing of an interest, power or obligation which is not shown to have ceased or expired and subject to which any part of the property is disposed of by an abstracted document.

(3) A document creating any limitation or trust by reference to which any part of the property is disposed of by an abstracted document (*c*).

(*u*) Law of Property Act, 1925, s. 44 (5).
(*x*) 17 Ch. D. 353; 50 L. J. Ch. 642; 44 L. T. 728; 29 W. R. 707.
(*y*) Law of Property Act, 1925, s. 44 (6).
(*z*) *Ibid.* s. 44 (7).
(*a*) *Ibid.* s. 44 (8).
(*b*) *Ibid.* s. 44 (9).
(*c*) *Ibid.* s. 45 (1).

The expense of production and inspection of documents in the possession of the vendor's mortgagee or trustee which formerly had to be borne by the purchaser is now under an open contract thrown upon the vendor (*d*). After 1925 a vendor is allowed to retain documents of title not only where he retains part of the land to which the title relates, but also where the document consists of a trust instrument or other instrument creating a trust which is still subsisting or an instrument relating to the appointment or discharge of a trustee of a subsisting trust (*e*).

The Statutory Form of Conditions of Sale, 1925, which was prescribed in pursuance of the Law of Property Act, 1925 (*f*), applies unless expressly modified to contracts for sale by correspondence made after 1925. It may by express reference be incorporated in other contracts.

These conditions are shortly as follows:—

1. Date for completion.—The first day, other than Sunday, Christmas Day, Good Friday or Bank Holiday, after the expiration of seven weeks from the time the contract was made.
2. Place of completion.—The office of the vendor's solicitors, or, if the vendor so requires, the office of the solicitors of the vendor's mortgagees. (No provision is made for the case where the vendor has no solicitor. Such practices presumably should not be encouraged.)
3. Apportionment of outgoings at completion.—A special provision is made for the apportionment of rates which is slightly in favour of the purchaser.
4. Interest to be paid on purchase-money at 5 per cent., apart from wilful default on the part of the vendor or his Settled Land Act trustees, with a provision for the cesser of interest on the deposit of the pur-

(*d*) Law of Property Act, 1925, s. 45 (4).
(*e*) *Ibid.* s. 45 (9), (10).
(*f*) Sect. 46.

chase-money or the balance thereof in a bank, where the purchaser is not in default.

Where interest is payable and the deposit has not been made the vendor may, by notice, elect to take rents and profits in lieu of interest.

5. Abstract to be delivered fourteen days after contract.
6. Original requisitions and objections fourteen days after delivery of abstract. Subsequent requisitions and objections seven days after previous replies.
7. Power to rescind where vendor unable to comply with any requisition or remove any objection, subject to ten days' notice.
8. Draft to be delivered ten days before completion. Engrossment to be delivered four days after return of draft. Such deliveries are without prejudice to outstanding requisitions.
9. Forfeiture clause.—Twenty-one days' notice specifying breach to be given before forfeiture.

The conditions as a whole are more favourable to the vendor than under an open contract before 1926, though not so favourable to the vendor as in the majority of expressly drawn contracts.

Where a contract for sale or exchange is made after 1925, subject to any stipulation therein and any requisite consent of the insurers and the payment by the purchaser of the proportionate part of the premium from the date of the contract, any money payable to the former owner under any policy of insurance maintained by him is to be held on completion on behalf of the purchaser or paid to him so soon thereafter as it is received (*g*). This provision favours the purchaser as it throws no obligation on the purchaser to pay the premium if there is no fire, and gives him the benefit of the insurance subject to the consent of the insurers, and payment of the premium in the event of a fire.

(*g*) Law of Property Act, 1925, s. 46.

Any stipulation made on the sale of an interest in land after 1925 to the effect that the conveyance to or registration of the title of the purchaser shall be prepared or carried out by a solicitor acting for the vendor, or any other stipulation restricting a purchaser in the selection of his solicitor is void. If a sale is carried out by demise or sub-demise, the instrument giving effect to the transaction is deemed a conveyance (*h*).

This does not prevent a right being reserved to the vendor to furnish a form of conveyance to a purchaser from which the draft can be prepared and to charge a reasonable fee therefor (*h*). Nor does it prevent the vendor stipulating that the conveyance is to be drawn by his solicitor at the purchaser's expense where the only consideration in money or money's worth is a perpetual rentcharge (*h*).

A covenant or stipulation in a lease or underlease, whenever made, which in any way restricts the right of a purchaser to have any assignment of the lease drawn by a solicitor appointed by him is to be void, and in lieu thereof a covenant to register with the lessor or his solicitor all conveyances and devolutions and pay a fee of one guinea in respect of each registration is to be implied (*i*).

A vendor and purchaser summons is made applicable to exchanges (*j*), and the Court is empowered, where it refuses specific performance or in any action for the return of the deposit, to order the repayment of the deposit if it thinks fit (*k*).

Presumably the Court will in future order the return of the deposit in every case where specific performance would be refused on account of the conduct of the vendor.

On a sale or exchange after 1925 the Court may, on a sufficient sum being paid into Court, declare the land sold and all other land, if any, affected by the incumbrance,

(*h*) Law of Property Act, 1925, s. 48 (1).
(*i*) *Ibid.* s. 48 (2).
(*j*) *Ibid.* s. 49 (1).
(*k*) *Ibid.* s. 49 (2).

free from the incumbrance (*l*). The extension to exchanges and to other land besides the land sold or exchanged is new (*m*).

Requisitions.

1. *The purchaser will not take a conveyance with the concurrence of the persons who appear to be entitled to equitable charges, and he accordingly requires the vendor to convey the property to trustees for sale under sect.* 2 (2) *of the Law of Property Act*, 1925, *or to constitute a settlement in accordance with sect.* 21 (1) *of the Settled Land Act*, 1925, *so as to override those charges.*

2. *The expense of appointing trustees for sale or trustees for the purpose of the Settled Land Act*, 1925, *and of the requisite vesting instrument must be borne by the vendor.*

3. *The purchaser insists upon the outstanding legal estate being traced and got in entirely at the expense of the vendor. A proper abstract tracing the devolutions of such estate must accordingly be delivered.*

4. *The vendor has contracted to sell a mortgage term less the last day of the original lease, but as he has power to convey the nominal reversion the purchaser will require it to be conveyed to him.*

5. *The power of attorney under which the document constituting the root of title was executed must be abstracted. Where can it be inspected?*

6. *The documents of title in the possession of the vendor's mortgagees must be produced for the purpose of examination of the abstract, and any charges for such production must be borne by the vendor.*

7. *The purchaser has placed the balance of the purchase-money on deposit at Bank and will pay to the vendor the interest, if any, allowed thereon from*

(*l*) Law of Property Act, 1925, s. 50.
(*m*) *Ibid.* s. 50 (3).

the date of deposit in lieu of the interest accruing after the date of deposit.

8. *Notwithstanding the condition providing that no compensation shall be given for misdescription, the deficiency in acreage is sufficiently large to prevent the vendor obtaining specific performance of the contract without giving proper compensation. The purchaser accordingly requires the vendor either to allow proper compensation or to at once return the deposit.*

CONTRACTS FOR SALE.

The portion of sect. 4 of the Statute of Frauds relating to contracts for sale is repealed and reproduced in the following form. It is of sufficient importance to repeat verbatim:—

> "No action may be brought upon any contract for the sale or other disposition of land or any interest in land, unless the agreement upon which such action is brought, or some memorandum or note thereof, is in writing, and signed by the party to be charged or by some other person thereunto by him lawfully authorised" (*a*).

The provision applies to contracts wherever made, and does not affect the law relating to part performance (*b*).

When repudiating a verbal contract care must be taken not to supply the memorandum or note thereof on which an action may be brought. This mistake has often been made.

Requisition.

The alleged purchaser insists upon the money that has been paid by him to the alleged vendor being at once returned. There is no evidence of any contract between the parties and the money cannot be treated as a deposit.

(*a*) Law of Property Act, 1925, s. 40 (1).
(*b*) *Ibid.* s. 40 (2).

CONVEYANCES.

After 1925 all lands and all interests therein lie in grant and cannot be conveyed by livery, livery and seisin, or by feoffment or by bargain and sale, and a conveyance may operate to pass possession or right to possession without actual entry (*a*). The use of the word grant is, of course, not necessary (*b*).

All conveyances of land or any interest therein are void for the purpose of conveying or creating a legal estate unless made by deed (*c*). This does not apply to:—

(1) Assents by personal representatives.

(2) Disclaimers in accordance with sect. 44 of the Bankruptcy Act, 1914, or not required to be in writing.

(3) Surrenders by operation of law, including surrenders which may by law be effected without writing.

(4) Leases or tenancies or other assurances not required by law to be made in writing.

(5) Receipts not required by law to be under seal.

(6) Vesting orders of the Court or other competent authority.

(7) Conveyances taking effect by operation of law (*d*).

After 1925 a conveyance of freehold land without words of limitation will pass to the grantee a fee simple, or other the whole interest which the grantor had power to convey unless a contrary intention is expressed (*e*).

After 1925 a conveyance of freehold land to a corporation sole by its corporate designation, without the word "successors," will pass the fee simple, or other the whole interest which the grantor had power to convey, unless a contrary intention is expressed (*f*).

After 1925 no resulting trust for the grantor is implied in a voluntary conveyance merely because the property is

(*a*) Law of Property Act, 1925, s. 51 (1).
(*b*) *Ibid.* s. 51 (2).
(*c*) *Ibid.* s. 52 (1).
(*d*) *Ibid.* s. 52 (2).
(*e*) *Ibid.* s. 60 (1).
(*f*) *Ibid.* s. 60 (2).

not expressed to be conveyed for the use or benefit of the grantee (*g*).

In consequence of these provisions the *habendum* of a conveyance of freeholds can be shortened after 1925 into the form "To HOLD unto X.," whether X. is an individual or a corporation sole or aggregate and notwithstanding that the conveyance may be voluntary. There is, of course, no harm in adding the words "in fee simple," but the word "heirs" should not be used, as it is difficult to be certain what construction would after 1925 be put upon a conveyance to X. and his heirs. The following direct conveyances are declared valid:—

X. to X. as to any land after 1925 (*h*).

X. to X. and Y. as to personal property, including leaseholds after 12th August, 1859 (*i*).

X. to X. and Y. as to real property and things in action after 1881 (*j*).

X. and Y. to X. as to any property whenever executed, even though X. and Y. are personal representatives (*k*).

The Statute of Uses is repealed (*l*). Consequently a conveyance executed after 1925 by A. to B. to the use of C. will vest the legal estate in B. and not in C., as it would have done before the Statute of Uses was passed.

A disentailing deed of land where A. is tenant in tail in possession may be made by A. to A. instead of by A. to B. to the use of A.

Shifting uses cannot be employed. If A. wishes to make a settlement on his marriage, he should not convey to B. to the use of A. until the intended marriage, but should execute the requisite trust instrument and vesting instrument as escrows (*m*). There is, of course, no objection to A.

(*g*) Law of Property Act, 1925, s. 60 (3).
(*h*) *Ibid.* s. 72 (3).
(*i*) *Ibid.* s. 72 (1).
(*j*) *Ibid.* s. 72 (2).
(*k*) *Ibid.* s. 72 (4).
(*l*) *Ibid.* s. 207 and 7th Schedule.
(*m*) Settled Land Act, 1925, 1st Schedule, Form 3, note.

declaring in the trust instrument that he will hold the property he intends to settle to the use of himself until the intended marriage, but it seems better to employ the words "in trust for" rather than the misleading "to the use of."

Requisition.

On the appointment of a new trustee for sale the property was conveyed after 1925 *to the new trustee to the use of the old trustees and the new trustee. The effect of this was to vest the legal estate in the new trustee alone, and it passed on his death to his legal personal representatives. The outstanding legal estate must be got in at the expense of the vendors prior to completion.*

COPYHOLDS.

Copyhold land includes land known as customary land or customary freehold land where the freehold is in the lord and not in the customary tenant, and for the purpose of the Law of Property Act, 1922, land of copyhold tenure held for life or lives or years determinable with life where the tenant has by custom a perpetual right of renewal, and land held in free tenure for life or lives whether or not determinable with life (subject to custom) where the tenant has by custom a perpetual right of renewal in each case, whether such right of renewal is or is not subject to the fulfilment of any conditions (*n*). The terms "copyholder in fee" and "tenant" are distinguished: the former means the person who is admitted in respect of the inheritance, the latter the person in whom the enfranchised land is vested by the Act and persons deriving title under him (*n*). On the 1st January, 1926, when the Law of Property Act, 1922, came into operation, every parcel of copyhold land was enfranchised and ceased to be of copyhold tenure (*o*).

(*n*) Law of Property Act, 1922, s. 189. (*o*) *Ibid.* s. 128.

This enfranchisement is to be considered as having taken place immediately before the commencement of the Law of Property Act, 1925, which came into operation on the same day. The enfranchisement will not affect—

(1) quit rents and chief rents and other similar rents and payments;

(2) fines, reliefs, heriots and dues, including fees payable to stewards;

(3) forfeitures, other than forfeitures for the conveyance or attempted conveyance of an estate of freehold in the land, or for alienation without license, whether by way of sale, lease, mortgage or otherwise;

(4) rights as to timber;

but in lieu of a chattel liable to be seized as a heriot a sum equal to the value thereof is to be payable (*p*).

All modes of assurance authorised by special custom are abolished and all land including land held in free tenure but subject to custom is to be dealt with as land held in free and common socage discharged from custom (*q*).

Provisions as to the effect of enfranchisement are contained in the Twelfth Schedule to the Law of Property Act, 1922. The schedule is, however, amended and extended by the Law of Property (Amendment) Act, 1924 (*r*). They are shortly as follows:—

The land is freehold, free from liability to forfeiture for conveyance of an estate of freehold or for alienation without license, whether by way of sale, lease, mortgage or otherwise.

The tenant is freed from suits, services and fealty.

The lord's right to escheat is abolished.

The land is not subject to the custom of borough-English, gavelkind, or any other customary mode of descent, or any

(*p*) Law of Property Act, 1922, s. 128 (2).
(*q*) *Ibid.* s. 128 (3).
(*r*) 2nd Schedule, para. 4 (1) and (2).

custom relating to dower, freebench or curtesy, but a right to freebench which has attached before 1926 and cannot be barred by a testamentary or other disposition made by the husband will remain in force in equity.

The land is to be held under the same title as before 1926 and is not subject to any estate or interest affecting the manor.

Every mortgage, whether effected by surrender with or without admission or by covenant to surrender, becomes a term of years in the same way as in the case of freehold land; but where land has been surrendered to a mortgagee without notice of a previous covenant to surrender contained in another mortgage, that mortgagee will not lose his priority over the last-mentioned mortgage.

The enfranchisement does not affect rights and interest under a will, settlement, mortgage or otherwise acquired by purchase, and the land is subject to the same trusts, powers, limitations, rights and equities as before enfranchisement.

Where there is a lease the freehold becomes the reversion expectant thereon, and the benefit and burden of covenants and conditions will run with the reversion and the land.

Commonable rights are unaffected.

Rights in or to any mines, minerals, quarries, franchises, fairs and markets and sporting rights are unaffected, but the freeholder is to have the right to disturb the soil for the purpose of making roads or drains, or erecting buildings, or obtaining water.

Liabilities for construction, maintenance or repair of dykes, ditches, canals, walls, pits, bridges, ways and other works are unaffected. Persons interested in enforcing the liability may apply to the Court to ascertain or apportion it and to charge it on the land, and the charge when made is to be a land charge and may be registered accordingly.

These rights are not deemed to be manorial incidents unless the contrary is agreed.

The vesting of the legal estate on enfranchisement is regulated as follows:—

(1) If there is a copyholder in fee (not being a mortgagee) the freehold estate in fee simple vests in that person (subject as afterwards provided).

(2) If there is no copyholder in fee, the freehold estate in fee simple vests in the person who, at the end of the year 1925, had the best right to be admitted as copyholder in fee otherwise than as mortgagee, but such person is personally liable to pay the fines and fees which would have been payable by him on admission, and if the last person who was admitted a copyholder in fee, being a trustee, died before 1926, his personal representative, if any, is deemed to have a better right to be admitted than his devisee or customary heir.

(3) Where derivative interests were allowed by custom to be granted to persons admitted copyholders in respect of such interests, legal interests (if the interest is capable of subsisting as a legal estate) or equitable interests (if not so capable) in the enfranchised land will be acquired, but so that a mortgagee shall only take a term of years.

(4) Where the copyhold was subject to interests which after 1925 are capable of subsisting at law but which were not capable of being overreached by virtue of a subsisting trust for sale or settlement, the persons entitled take legal estates corresponding to their former equitable or other interests.

(5) Where there is at the commencement of 1926 a person (not being a mortgagee) entitled to a perpetually renewable lease in copyhold land, the freehold estate vests in such person as if he was a copyholder in fee.

(6) Where the copyholder in fee is a mortgagee, the freehold estate in fee simple vests in the person entitled to the equity of redemption subject to the terms of years which vest in the mortgagees.

7. Where a copyholder in fee is a trustee for a corporation or other person absolutely and beneficially entitled, the freehold estate or other corresponding legal estate vests in the corporation or other person beneficially entitled.

8. Where a person has under the Limitation Acts acquired a customary estate corresponding to a legal estate, then a legal estate corresponding to that estate vests in him.

These provisions are subject to the following provisoes:—

1. If the person who has the best right to be admitted cannot be ascertained or found, the Court may, on the application of the lord or any person interested, make orders vesting the estate in any person.

2. If the copyholds at the commencement of 1926 are settled land, the freehold vests in the tenant for life of full age or statutory owner.

3. If the copyholds are vested in an infant, the freehold vests in the personal representatives or trustees or other persons entitled to the legal estate of the infant.

4. If the copyhold land is held in undivided shares, the freehold vests in the same manner as is provided with regard to freehold land so held.

5. If the copyhold land is subject to a trust for sale, the freehold vests in the trustees for sale as in the case of freehold land.

6. Where copyhold land vests in a person not the copyholder in fee, he is personally liable for fines and fees as if admitted just before the statutory enfranchisement.

7. If the copyhold land vests in more than one person, they are only liable to the same fines and fees as if it vested in a single person.

8. No fines or fees are payable if at the commencement of 1926 there is a copyholder in fee, whether or not a mortgagee, notwithstanding the freehold is made to vest in another person.

9. No fines or fees are payable by reason of the vesting under the Law of Property Act, 1922, of a term of years, perpetual rentcharge or other derivative legal estate in the

person entitled thereto although he may not have been admitted.

So long as any manorial incidents remain unextinguished as respects any enfranchised land, an assurance of that land or any estate or interest therein becomes void as regards the grant or conveyance of a legal estate on the expiration of six calendar months from the date of its execution or of such extended period as the Court may allow, unless the assurance has been produced to the steward of the manor (*s*). On the production to him within the time allowed and on payment of any fines, reliefs or heriots payable in respect of the transaction, and the arrears (if any) in respect of any former transaction, and all quit and other rents, and of the prescribed fee, the steward must return the assurance and endorse it with a certificate in the prescribed form and manner denoting that the assurance has been so produced, and on failure is liable to indemnify any person who suffers in consequence (*t*). "Prescribed" means prescribed by the Minister of Agriculture and Fisheries (*u*).

The following form has been prescribed by the Enfranchised Land (Certificate of Endorsement) Regulations, dated July 29, 1925:—

> I the steward of the Manor of in the Parish of in the County of in pursuance of the provisions of sect. 129 of the Law of Property Act, 1922, hereby certify that the within-written assurance of (an interest in) enfranchised land held of the said manor was produced to me before the expiration of (six months from the date of its execution) (the extended time allowed by order of the Court dated day of 192).
>
> Signature of Steward.
>
> 19 .

(*s*) Law of Property Act, 1922, s. 129 (1).
(*t*) *Ibid.* s. 129 (2).
(*u*) *Ibid.* s. 189 and s. 188 (31).

A statement to the like effect will suffice, or a stamp filled in and dated and signed in the following form may be used:—

> Produced as required by sect. 129 of the Law of Property Act, 1922.
>
> ,
> Steward of the Manor.
> , 19 .

A certificate duly endorsed is conclusive evidence that the instrument was produced to the steward within the time allowed, and a certificate is to be taken as having been duly endorsed by the steward till the contrary is shown (*x*).

If there is a three months' vacancy in the stewardship of a manor and in certain other cases, the Lord Chancellor may transfer the steward's duties to the Land Registrar (*y*).

The procedure does not apply to land registered under the Land Registration Act, 1925, but in that case the Land Registrar will ascertain that fines, reliefs, heriots and fees have been paid before registering a transaction (*z*).

Assurances required to be endorsed by a certificate do not include wills and grants or assignments of leases or tenancies for a year or less or from year to year, but do include assents, vesting orders and vesting declarations (*a*). Special regulations are made to meet the case where the practice in the manor has been to leave the customary estate outstanding in a trustee on trust for the creation of perpetual rentcharges or other derivative interests (*b*).

Until the manorial incidents have been extinguished, the same fines and the same payments in lieu of heriots are payable as if the land had remained copyhold (*c*).

(*x*) Law of Property Act, 1922, s. 129 (3).
(*y*) *Ibid.* s. 129 (4).
(*z*) *Ibid.* s. 129 (5), (6).
(*a*) *Ibid.* s. 129 (9).
(*b*) *Ibid.* s. 129 (10).
(*c*) *Ibid.* s. 130 (1).

Where an alienation without the license of the lord would have given rise to a forfeiture, the like fine is payable as would have been payable for the license, or if no such fine is fixed by custom a reasonable fine, to be determined by the Minister of Agriculture if the lord and tenant disagree (*d*).

No fine is to be payable for a mortgage unless and until the mortgagee, in exercise of a power of sale, conveys the land to a purchaser or transfers the mortgage without the concurrence of the mortgagor (*e*). This does not affect the right of the lord to a double fine on the conveyance by a mortgagee who was not admitted before 1926 to a purchaser, or on a transfer of his mortgage without the concurrence of the mortgagor, or on the extinguishment of the right of redemption under the mortgage (*f*). Fines and heriots are to be only recoverable as simple contract debts and only within six years after they become payable, or before 1932 in the case of fines and heriots payable before 1926 (*g*).

The steward of a manor is to be only entitled to such fees as may be prescribed by the Minister of Agriculture and Fisheries, but where a steward was appointed before the 29th June, 1922, the prescribed fee shall be:—

(1) The customary fee, where the transaction is one on which a customary fee would have been payable but for enfranchisement.

(2) Such customary fee as would have been payable on a conditional surrender, where the transaction is a mortgage.

(3) Regulated by the length of the instrument containing the assurance of the land, where the customary fee was regulated by the length of the assurance (*h*).

(*d*) Law of Property Act, 1922, s. 130 (2).
(*e*) *Ibid.* s. 130 (3).
(*f*) *Ibid.* s. 130 (4).
(*g*) *Ibid.* s. 130 (5).
(*h*) *Ibid.* s. 131 (1).

The Land Registrar acting as steward is to be only entitled to the same fees as a steward appointed on or after the 29th June, 1922 (*i*).

Forfeitures not abolished are to be only enforceable by action to recover possession, and then only after notice specifying the act or neglect complained of and requiring the tenant to remedy the same, and in any case to make compensation in money for the act or neglect, has been given and the tenant has failed to remedy the act or neglect, if capable of remedy, and to make reasonable compensation (*k*). The Court can grant relief on such terms as it thinks proper (*l*).

Where copyholds are held for a life or lives or for years and the tenant has not a perpetual right of renewal, the tenant's interest is converted into a term of years absolute. In the case where the interest is for a life or lives the length of the term is to be ninety years, but will be determinable by one month's notice in writing given to determine the same on one of the quarter-days applicable to the tenancy (*m*). Where copyholds are held for a life or lives or for years, whether or not determinable with life, and the tenant has a perpetual right of renewal, the tenant or the person who has the best right to be admitted acquires the freehold in the same manner as if his right extended to the inheritance (*n*).

The services incident to grand and petty serjeanty are not affected and they are not to be deemed manorial incidents, but the land subject thereto is subject in all respects to the provisions of the Act of 1922 (*o*).

Manors or lands vested in the King in right of the Crown, or of the Duchy of Lancaster, or the Duchy of Cornwall, or in the Duke of Cornwall, for the time being

(*i*) Law of Property Act, 1922, s. 131 (2).
(*k*) *Ibid.* s. 132 (1).
(*l*) *Ibid.* s. 132 (2).
(*m*) *Ibid.* s. 133; and Law of Property Act, 1925, s. 149 (6).
(*n*) Law of Property Act, 1922, s. 135.
(*o*) *Ibid.* s. 136.

are bound by the enactment (*p*), but there are special provisions relating to the Manors of Hampton Court and Richmond (*q*).

Manorial incident will be extinguished—

(1) Voluntarily by an agreement between the lord and tenant at any time between 1st January, 1926, and 31st December, 1935 (inclusive). A form of compensation agreement is given (*r*). Only persons who, on a sale of the manorial incidents or the land respectively, would have been able to make a title thereto should be parties. The extinguishment dates from the execution of the agreement.

(2) By notice served by the tenant on the lord between 1st January, 1926, and 31st December, 1935 (inclusive), or by the lord on the tenant between 1st January, 1931, and 31st December, 1935 (inclusive), requiring the ascertainment of the composition for extinguishment of manorial incidents.

(3) If no agreement is made or notice served, on 1st January, 1936.

The extinguishment will not affect the right to enforce past manorial incidents (*s*).

The period in the case of manors with more than 1,000 tenants may be extended by the Minister of Agriculture and Fisheries (*s*).

Unless the extinguishment is affected by agreement the provisions of the Copyhold Act, 1894, subject to the amendments effected by the Property Acts, 1922 and 1924, apply to the extinguishment of manorial incidents as if "extinguishment" were therein substituted for "enfranchisement," and so that the compensation payable for extinguishment is to be the same as would be payable for enfranchisement if the enfranchisement had taken place at the date of the extinguishment (*t*).

(*p*) Law of Property Act, 1922, ss. 134 and 141.
(*q*) *Ibid.* s. 137.
(*r*) *Ibid.* 13th Schedule, Part I.
(*s*) Law of Property Act, 1925, s. 138 (1).
(*t*) *Ibid.* s. 138 (4) and 13th Schedule, Part II. 18.

Any person who, on a sale, could dispose of the enfranchised land or of the manor (as the case may be) can agree to the creation of a compensation rentcharge (*u*). The lord or the tenant must at the cost and request of the other furnish a statutory declaration showing who has power to enter into a compensation agreement, and in the case of the lord to give a receipt for the compensation money, and such declaration validates acts of the persons acting on them (*u*).

Where the compensation (whether under a compensation agreement or under the Copyhold Act, 1894, as applied by the Property Acts, 1922 and 1924), is a gross sum, the land stands charged therewith in priority to any other incumbrances (except tithe rentcharge and any charge having priority by statute) and with interest thereon at $5\frac{1}{2}$ per cent. from the date of extinguishment, and the person entitled to give a receipt for the charge has, after the expiration of six calendar months from the time when the amount has been ascertained, all the statutory powers of a mortgagee by deed whose power of sale has arisen (*x*).

But, apart from agreement, the compensation money will only be payable as a gross sum—

(1) If the land is settled land and there is sufficient capital money out of which the compensation may be discharged.

(2) If the land is held on trust for sale and there is sufficient personal estate (not being chattels real) settled on the same trusts as the proceeds of sale out of which the compensation may be discharged.

(3) If the compensation does not exceed 20*l*. (*y*).

(4) If the compensation money is in respect of a derivative interest, where it was the practice for copyholders to grant derivative interests to persons who were admitted copyholders in respect thereof or where legal estates derived out of the fee simple

(*u*) Law of Property Act, 1925, s. 138 (5).
(*x*) Law of Property Act, 1922, s. 138 (7).
(*y*) *Ibid.* s. 139 (1) (v).

are created by the Act of 1922 for giving effect to former equitable interests (in both of which cases the derivative interests are treated separately for the purpose of extinguishment) (*z*).

In other cases (unless paid within thirty days after ascertainment) the compensation is to be paid by twenty equal annual instalments, the first on the 1st of January next after the ascertainment of the amount of compensation money with interest at $5\frac{1}{2}$ per cent. from the date of extinguishment, and a further instalment with interest at the same rate on every subsequent 1st day of January until paid, and is secured by a terminable rentcharge issuing out of the land and payable on the same days but accruing from day to day (*a*).

The rentcharge can be redeemed at any time on giving one calendar month's notice and paying interest to date of redemption (*b*).

If the application is not made until after 1935, the lord will not be entitled to any interest between the 1st January, 1936, and the date of the application (*c*), and if no application is made before 1941 no compensation will be payable.

If the extinguishment is effected by notice the costs and expenses will be payable by the party giving the notice unless the Minister considers the other party's conduct has been unreasonable (*d*).

If the extinguishment is effected by lapse of ten years, the costs and expenses will be borne by the tenant unless the Minister considers the lord's conduct has been unreasonable (*e*).

If the extinguishment takes effect before 1936, the agreement, award, compensation charge, and certificate will not be chargeable with any stamp duty, and the Minister may not require payment by either party of any office fees or

(*z*) Law of Property Act, 1922, s. 142.
(*a*) *Ibid.* s. 139 (1) (v).
(*b*) *Ibid.* s. 139 (3).
(*c*) *Ibid.* s. 140.
(*d*) *Ibid.* s. 139 (1) (ix).
(*e*) *Ibid.* s. 140.

other expenses of the Ministry apart from unnecessary and unreasonable applications (*f*).

The lord and tenant may in writing agree that any right which is preserved by the Twelfth Schedule of the Act of 1922 shall be treated as a manorial incident and be extinguished, or that there shall be granted to the lord as compensation for the extinguishment of manorial incidents any estate or right of the tenant or any right of way or other easement for more effectually winning and carrying away mines and minerals under the land, including a right to let down the surface; but where any such agreement relates to mines and minerals the consideration for the estate or right must be determined by agreement and not otherwise, and any such agreement for the extinguishment of the right of the lord in or to mines and minerals will (subject to the provisions of the agreement) operate as a conveyance to the tenant although not under seal (*g*).

After 1935 it will no doubt still be possible for the lord and the tenant to come to an agreement as to compensation for manorial incidents, but such agreement will have no statutory effect and will not be technically a compensation agreement, and the tenant would not be absolved from investigating the lord's title nor be able to insist that a purchaser of the land should not call for the lord's title to enter into the agreement and to give a receipt for any money agreed to be paid.

Where the manorial incidents formerly affecting any land have been extinguished, a purchaser under a contract to sell the freehold has not the right to call for the title of the person entering into any compensation agreement or giving a receipt for the compensation money to enter into such agreement or give such receipt, and is not deemed to be affected with notice of any matter or thing of which, if he had contracted that such title should be furnished, he might have had notice (*h*).

(*f*) Law of Property Act, 1922, s. 139 (vii).
(*g*) *Ibid.* s. 138.
(*h*) Law of Property Act, 1925, s. 44 (7).

A certificate under the seal of the Minister of Agriculture and Fisheries stating that the compensation for extinguishment has been duly ascertained is conclusive evidence of the facts so stated (*i*). Rules have been made pursuant to sect. 139 (4) of the Law of Property Act, 1922, for giving effect to the provisions of that Act and setting forth the provisions of the Copyhold Act, 1894, applicable for the purpose of extinguishment of manorial incidents. These rules, which are known as the Manorial Incidents (Extinguishment) Rules, 1925, should be consulted in case any difficulty arises, as they show very clearly how the provisions of the Copyhold Act, 1894, originally applicable to enfranchisement are modified so as to make them applicable to extinguishment of manorial incidents.

Requisitions.

1. *Was the copyholder in fee immediately before the 1st January,* 1926, *a trustee for any corporation or for any other person or persons?*

2. *Has any notice been served requiring the ascertainment of compensation for the extinguishment of manorial incidents? If so, on what date and by whom?*

3. *Will the vendor, on being indemnified by the purchaser, serve a notice on the lord requiring the ascertainment of compensation for the extinguishment of manorial incidents so as to save the fine payable on the conveyance?*

(*i*) Law of Property Act, 1922, s. 139 (2) (a).

CORPORATIONS.

A "trust corporation" means the Public Trustee or a corporation either appointed by the Court in any particular case or entitled under rules made under sect. 4 (3) of the Public Trustee Act, 1906, to act as custodian trustee (*k*).

Where at the commencement of 1926 property was vested in a syndic on behalf of a trust corporation acting as personal representative of a deceased person, the property vested in the corporation and the syndic is entitled to be indemnified by the corporation as to any interest so vested. This does not apply to registered or inscribed securities or a registered charge under the Land Registration Act, 1925, in the name of the syndic (*l*). After 1925 representation is not to be granted to a syndic or nominee on behalf of a trust corporation (*m*), but probate (*n*) or administration (*o*) may be granted to any trust corporation solely or jointly with another person.

A trust corporation can give valid receipts for or direct the application of capital money arising under a trust for sale (*p*) or arising under the Settled Land Act, 1925 (*q*), although two trustees in other cases are necessary for these purposes.

No words of limitation are necessary after 1925 in a conveyance to a corporation sole (*r*). They were never necessary in a conveyance to a corporation aggregate.

In favour of a purchaser, a deed executed after 1925 by a corporation aggregate is deemed duly executed if its seal is affixed in the presence of its clerk, secretary, or other permanent officer or his deputy, and a member of the board of

(*k*) Settled Land Act, 1925, s. 117 (1); Trustee Act, 1925, s. 68 (18); Law of Property Act, 1925, s. 205 (1) (xxviii); Administration of Estates Act, 1925, s. 55 (1) (xxvi).
(*l*) The Supreme Court of Judicature Act, 1925, s. 161 (4).
(*m*) *Ibid.* s. 161 (2).
(*n*) *Ibid.* s. 161 (1) (a).
(*o*) *Ibid.* s. 161 (1) (b).
(*p*) Law of Property Act, 1925, s. 27 (2).
(*q*) Settled Land Act, 1925, ss. 94 and 95.
(*r*) Law of Property Act, 1925, s. 60 (2).

directors, council or other governing body, and where a seal purporting to be the seal of the corporation has been affixed to a deed attested by persons purporting to be persons holding such offices as aforesaid the deed is to be deemed to have been executed in accordance with these requirements (*s*). Such governing body as aforesaid may appoint an agent generally or in any particular case to execute documents not under seal on behalf of the corporation (*t*). An attorney authorised to execute a deed on behalf of a corporation may sign the name of the corporation in the presence of one witness and affix his own seal (*u*). Where the corporation itself is the attorney, the deed may be executed by an officer appointed for the purpose by the governing body of the corporation (*x*).

Where a corporation has been dissolved and a legal estate in any property has consequently determined, the Court can create a new legal estate and vest it in the person who would be entitled thereto had it remained a subsisting estate (*y*).

A vacancy in the office of a corporation sole will not prevent any estate vesting in the corporation on the successor being appointed or invalidate any contract, transaction or appointment (*z*).

Requisition.

It is requested that the vendor company execute the conveyance by having its seal affixed in the presence of a director and countersigned by its secretary so as to render unnecessary the preservation of a record of the provision in the articles allowing the seal to be affixed in the presence of a director only.

(*s*) Law of Property Act, 1925, s. 74 (1).
(*t*) *Ibid.* s. 74 (2).
(*u*) *Ibid.* s. 74 (3).
(*x*) *Ibid.* s. 74 (4).
(*y*) *Ibid.* s. 181.
(*z*) *Ibid.* s. 180.

COVENANTS.

After 1925 covenants are implied (unless the implication is excluded or modified) in conveyances of land subject to a rentcharge or apportioned rentcharge and in assignments of leasehold property.

The covenants implied in a conveyance (other than a mortgage) of the entirety of land subject to a rentcharge are that the grantee will pay the rentcharge and perform the covenants, agreements and conditions in the document creating the rentcharge and indemnify the grantor. This also applies to an apportioned rentcharge where the rentcharge has been apportioned with the consent of the owner of the rentcharge (*a*). If the rentcharge has not been legally apportioned, similar covenants are implied on the part of the grantee with respect to the part of the rentcharge intended to be paid by him (*b*); and if the grantor conveys as beneficial owner, similar covenants with the grantee are implied binding the grantor to pay the part of the rentcharge intended to be paid by the grantor and to indemnify the grantee against that part (*c*).

In the case of an assignment (other than a mortgage) of the entirety of land comprised in a lease, a covenant on the part of the assignee to pay the rent and perform the covenants, agreements and conditions in the lease and indemnify the grantor is implied. This also applies to an apportioned rent where the rent has been apportioned with the consent of the lessor (*d*).

If the rent has not been legally apportioned, similar covenants are implied on the part of the assignee with respect to the part of the rent intended to be paid by him (*e*), and if the assignor conveys as beneficial owner similar covenants with the grantee are implied binding the assignor to pay

(*a*) Law of Property Act, 1925, s. 77 (1) (A).
(*b*) *Ibid.* s. 77 (1) (B) (i).
(*c*) *Ibid.* s. 77 (1) (B) (ii).
(*d*) *Ibid.* s. 77 (1) (C).
(*e*) *Ibid.* s. 77 (1) (D) (i).

the rent intended to be paid by the assignor and to indemnify the grantee against that part (*f*).

The liability is limited in each case to the covenants and conditions so far as they relate to the land conveyed or retained, and the covenants which are set out in full (*g*) are much the same as would be inserted at length in conveyances of land subject to a rentcharge or assignments of a lease. They apply to the limiting case where the whole rentcharge or rent is payable by the grantor, grantee, assignor or assignee (*h*), but they do not apply in a lease (*i*).

The covenants may be implied on the part of a grantor or assignor other than a beneficial owner by express reference to the section (*j*) and may be varied or extended (*k*). In particular the covenants may be extended by providing that—

(1) the land conveyed,

(2) the part of the land affected by the rentcharge which remains vested in the covenantor,

(3) the part of the land demised which remains vested in the covenantor,

shall stand charged with the payment of all money which may become payable under the implied covenant (*l*).

The benefit of the implied covenants run with the land (*m*), but the burden does not.

It is conceived that the implied covenants have only the same effect as if they had been set out in the deed in full and that they do not, therefore, dispense with the necessity of the deed being executed by the grantee or assignee.

Where in a conveyance for valuable consideration other than a mortgage of part of land affected by a rentcharge or

(*f*) Law of Property Act, 1925, s. 77 (1) (D) (ii).
(*g*) *Ibid.* 2nd Schedule, Parts VII., VIII., IX. and X.
(*h*) *Ibid.* s. 77 (2).
(*i*) *Ibid.* s. 77 (3).
(*j*) *Ibid.* s. 77 (4).
(*k*) *Ibid.* s. 77 (6).
(*l*) *Ibid.* s. 77 (7).
(*m*) *Ibid.* s. 77 (5).

comprised in a lease, such rentcharge or rent is without the consent of the owner of the rentcharge or the lessor—

(1) charged exclusively on the land conveyed or any part thereof in exoneration of the land retained or other land; or

(2) charged exclusively on the land retained or any part thereof in exoneration of the land conveyed or other land; or

(3) apportioned between the land conveyed or any part thereof and the land retained by the grantor or any part thereof,

then, without prejudice to the rights of the owner of the rentcharge or the lessor, the apportionment is binding as between the parties and their respective successors in title (*n*); and if default is made in the payment of the whole or any part of the rentcharge or rent by the person who ought to pay the same, or any breach of any of the covenants (other than the covenant to pay the entire rentcharge or rent when the same is apportioned) or conditions contained in the document creating the rentcharge or lease so far as relates to the land conveyed or retained, as the case may be, the owner for the time being of any other land affected by the rentcharge or the lessee for the time being of any other land comprised in the lease who pays any part of the rentcharge or rent which ought to be paid by the defaulter or incurs any costs, damages or expenses by reason of the breach of covenant or condition, may enter into and distrain on the land in respect of which the default is made or the breach occurs and dispose according to law of any distress found, and may also take possession of the income of the same land until, by means of such distress and receipt of income or otherwise, the whole or part of the rentcharge or rent so unpaid and all costs, damages and expenses incurred by reason of the non-payment thereof or the breach of the said covenants are fully paid or satisfied (*o*).

(*n*) Law of Property Act, 1925, s. 190 (1), (3).
(*o*) *Ibid.* s. 190 (2), (4).

The remedies only apply to conveyances or assignments after 1925 and do not apply where the exclusive charge or apportionment is with the consent of the owner or lessor (*p*). They may be excluded or modified by the conveyance (*q*), and the rule against perpetuities does not apply to them or any like powers or remedies conferred by an instrument whether before 1926 or after 1925 (*r*).

It is also declared that a power of distress against a rent or any part thereof or against a breach of any covenant or condition in relation to land is not, and is not to be deemed ever to have been, a bill of sale within the meaning of the Bills of Sale Acts, 1878 and 1882, as amended by any subsequent enactment (*s*). The doubts which have hitherto existed as to the validity of such powers of distress and entry as regards the rule against perpetuities and as to the validity of such powers of distress as regards the Bills of Sale Acts, 1878 and 1882, are thus removed.

The benefit of a covenant entered into after 1925 relating to land of the covenantee is deemed to be made with the covenantee and his successors in title to the land of the covenantee intended to be benefited and the persons deriving title under him or them (*t*).

The burden of a covenant entered into after 1925 relating to any land of the covenantor or capable of being bound by him is (unless a contrary intention is expressed) deemed to be made on behalf of himself and his successors in title and the persons deriving title under him or them (*u*). In both cases, for the purposes in connection with covenants restrictive of the user of land, "successors in title" are deemed to include owners and occupiers for the time being (*x*).

The provisions relating to the burden of a covenant will not, of course, make such burden run with the land in any

(*p*) Law of Property Act, 1925, s. 190 (7).
(*q*) *Ibid.* s. 190 (6).
(*r*) *Ibid.* s. 190 (8).
(*s*) *Ibid.* s. 189 (1).
(*t*) *Ibid.* s. 78 (1).
(*u*) *Ibid.* s. 79 (1).
(*x*) *Ibid.* ss. 78 (1) and 79 (2).

case where it could not be made to run with land before 1926, but it makes the mention of "assigns" unnecessary, and in particular abolishes the distinction which was formerly said to exist between covenants relating to things *in esse*, parcel of demised premises which bound the assigns whether they were named in the lease or not, and covenants concerning a thing not *in esse* at the time of the demise, but to be done on the land afterwards, which were supposed not to bind the assign if he was not named (*y*).

Covenants and agreements, whether express or implied, entered into by a person with himself and one or more other persons are to be construed and to be capable of being enforced in like manner as if the covenant or agreement has been entered into with the other person or persons alone (*z*). This is an important retrospective amendment, as such covenants were formerly void at law (*a*).

Power is given to "the authority," which means such one or more of the official arbitrators appointed for the purposes of the Acquisition of Land (Assessment of Compensation) Act, 1919, as may be selected by the Reference Committee under that Act (*b*), to discharge or modify restrictions arising under covenants or otherwise which relate either to freehold land or to leasehold land other than mining leases (*c*). In the case of leasehold land the lease must have been originally created for a term of more than seventy years and fifty years of the term must have expired (*d*).

The order may be made by the authority on the application of any person interested (subject or not to the payment by the applicant of compensation to any person suffering loss in consequence) on being satisfied—

(1) that by reason of changes in the character of the property or the neighbourhood or other circum-

(*y*) *Spencer's Case*, 5 Rep. 16a.
(*z*) Law of Property Act, 1925, s. 82 (1).
(*a*) *Ellis* v. *Kerr*, (1910) 1 Ch. 529; *Napier* v. *Williams*, (1911) 1 Ch. 361.
(*b*) Law of Property Act, 1925, s. 84 (11).
(*c*) *Ibid.* s. 84 (1).
(*d*) *Ibid.* s. 84 (12).

stances the restriction ought to be deemed obsolete; or

(2) that the continued existence of the restriction unmodified would impede the reasonable user of the land for public or private purposes; or

(3) that all persons of full age and capacity for the time being entitled to the benefit of the restriction have agreed, expressly or impliedly, to the discharge or modification of the restriction; or

(4) that the proposed discharge or modification will not injure the persons entitled to the benefit of the restriction (*e*).

Compensation is in general only payable if the person entitled to the benefit of the restriction suffers loss (*e*).

The power cannot be exercised where the restriction was imposed on the occasion of a disposition made gratuitously or for a nominal consideration for public purposes (*f*).

An appeal lies to the Court from an order by the authority (*g*).

The Court is given power, on the application of any person interested, to declare whether land within these provisions is affected by a restriction and to declare the nature and extent of the restriction and whether it is enforceable and by whom (*h*).

Requisition.

The purchaser cannot accept the vendor's assurance that the restrictive covenants affecting the property contracted to be sold are now obsolete, and application must accordingly be made by the vendor at his own expense to "the authority" under sect. 84 *of the Law of Property Act,* 1925, *to discharge the restrictions.*

(*e*) Law of Property Act, 1925, s. 84 (1).
(*f*) *Ibid.* s. 84 (7).
(*g*) *Ibid.* s. 84 (5).
(*h*) *Ibid.* s. 84 (2).

COVENANTS FOR TITLE.

The statutory covenants for title can after 1925 be implied in an assent in the like manner as in a conveyance by deed (*i*). They can also be implied in a charge (*k*). The "beneficial owner" covenants implied in a charge are the same as in a mortgage (*l*).

In a conveyance as beneficial owner by way of mortgage or charge of freehold property subject to a rent, precisely similar covenants are implied as in a mortgage or charge of leasehold property (*m*). The usual covenant implied by conveying "as trustee" may also be implied by conveying "as receiver of a defective" (*n*).

Except with respect to assents by a personal representative, the section which re-enacts sect. 7 of the Conveyancing Act, 1881 (*o*), and contains the foregoing alterations, is made to apply to conveyances made after 1881 (*p*), and in that respect appears to be retrospective in its operation and consequently to extend the effect of beneficial owner covenants in existing mortgages of freeholds subject to rents.

CURTESY.

On deaths after 1925 curtesy can only arise if the deceased wife was a lunatic or defective on 1st January, 1925, and unable by reason of her incapacity to make a will, and has died thereafter without having recovered her testamentary capacity (*c*), or without her committee or receiver having been discharged, or if the deceased wife was entitled to an entailed interest in possession in any property real or

(*i*) Administration of Estates Act, 1925, s. 36 (3).
(*k*) Law of Property Act, 1925, s. 205 (1) (ii).
(*l*) *Ibid.* s. 76 (1) (C).
(*m*) *Ibid.* s. 76 (1) (D) and 2nd Schedule, Part IV.
(*n*) *Ibid.* s. 76 (1) (F).
(*o*) *Ibid.* s. 76.
(*p*) *Ibid.* s. 76 (8).
(*c*) Administration of Estates Act, 1925, s. 51 (2).

personal (*d*), and has died without disposing of it by a will made or confirmed or republished by codicil after 1925 (*e*).

A tenant by the curtesy has the powers of a tenant for life under the Settled Land Act, 1925 (*f*).

He is deemed to take an estate or interest under a settlement made by his wife (*g*).

The personal representatives of the wife will be trustees of this settlement, but if there is sole personal representative it will be obligatory on him to appoint an additional trustee to act with him before he can receive notices or capital money on a sale by the tenant for life (*h*). Before any sale or other transaction under the Settled Land Act, 1925, can be made or carried out by the tenant for life, the personal representatives of the tenant in tail will have to execute a principal vesting assent. As the land prior to the death of the tenant in tail will have been settled land, there will usually have been a previous vesting instrument, and in that case a purchaser can assume that the person in whom the land is by the instrument vested or declared to be vested is the tenant for life or statutory owner, and the persons by the said instrument stated to be trustees of the settlement are such trustees (*i*); but if the vesting assent is the first vesting instrument to be executed, then the purchaser will be bound to see that the person in whom the settled land is by the vesting assent vested is the tenant for life or statutory owner, so that he will be bound to inquire into the title and see that the alleged tenant in tail was tenant in tail of the land contracted to be sold, and that the tenant by the curtesy was the husband of the tenant for life and had issue born of her capable of inheriting under the entail, and a purchaser will also be bound to see that the persons stated to be trustees of the settlement were really trustees of the settlement for the purposes of the Settled Land Act, 1925 (*i*). But if the purchase is from the personal repre-

(*d*) Administration of Estates Act, 1925, s. 51 (4).
(*e*) Law of Property Act, 1925, s. 176.
(*f*) Settled Land Act, 1925, s. 20 (1) (vii).
(*g*) *Ibid.* s. 20 (3).
(*h*) *Ibid.* s. 30 (3).
(*i*) *Ibid.* s. 110 (2).

sentative who has not executed any assent or conveyance, the purchaser need make no inquiry (*k*).

Requisitions.

1. *As no vesting instrument had been executed previously to the assent by the tenant in tail's personal representative, the purchaser must be satisfied that the vendor was the husband of the tenant in tail and had issue born alive capable of inheriting under the entail. The abstract must state the date of the marriage and the date of the birth of at least one [son] [child] of the marriage. The appointment of the trustees alleged to be trustees in the vesting assent must also be abstracted.*

2. *Was not any vesting instrument executed by the trustees of the settlement under which the deceased tenant in tail derived her interest? Any such instrument must be abstracted.*

3. *Is the vendor selling in his capacity as tenant by the curtesy or as sole administrator of the deceased tenant in tail? If in the former capacity a proper vesting assent must be executed; if in the latter capacity, has any assent or previous conveyance been executed by the vendor?*

DEATH DUTIES.

Any charge acquired by the Commissioners of Inland Revenue for death duties leviable or payable on any death after 1925 can be registered as a land charge (*l*). Such a charge, if not registered, is void against a purchaser for valuable consideration in money or money's worth of a legal estate (*m*). These words appear to be definite enough to include an inchoate claim to succession duty which has

(*k*) *Ibid.* s. 110 (3).
(*l*) Land Charges Act, 1925, s. 10 (1), Class D (i).
(*m*) *Ibid.* s. 13 (2).

arisen prior to 1926, but which will not be actually payable until after a death after 1925, but it is perhaps safer to assume that they do not cover such a claim as the words in the Law of Property Act, 1925, are not so clear. It is there provided that where a charge in respect of death duties is not registered as a land charge, a purchaser in good faith for valuable consideration (which in this Act includes marriage (*s*)) shall take free therefrom unless the charge for duties attached before 1926 and the purchaser had notice of the facts giving rise to the charge (*t*). If the charge is not registered, the conveying party and the proceeds of sale, funds and other property (if any) derived from the conveyance becomes liable to the duty (*u*). Conveyances, other than to a purchaser in good faith and for valuable consideration, take effect subject to the charge for duties (*x*). It must be remembered registration as a land charge constitutes actual notice (*y*), so if a charge which attached before 1926 for duties leviable or payable after 1925 is registered, the purchaser may be treated as having notice of the facts giving rise to the charge, although he knows nothing about them in consequence of not having searched. Duties leviable or payable before 1926 cannot be registered as land charges, so a purchaser is safe as regards these duties if he has no notice of the facts giving rise to the charge, and he is, of course, also safe as regards duties arising on any death which occurred more than twelve years previous to the date of completion (*z*).

The provisions of the Law of Property Act, 1925, and the Land Charges Act, 1925, with reference to death duties do not apply to land the title to which is registered. Where the title is registered a purchaser for money or money's worth takes free from all duties payable or leviable after

(*s*) Law of Property Act, 1925, s. 205 (1) (xxi).
(*t*) *Ibid.* s. 17 (1).
(*u*) *Ibid.* s. 17 (2).
(*x*) *Ibid.* s. 17 (4).
(*y*) *Ibid.* s. 198 (1).
(*z*) The Customs and Inland Revenue Act, 1889, s. 12; Finance Act, 1894, s. 8 (2), (18).

1925, even though notice of claim to the duties is noted on the register (*a*). Other persons take subject to duties even though no notice of claim to the duties is noted on the register (*b*).

Requisition.

A charge for succession duty payable on the death of A. B. is registered against the name of the vendor and apparently affects the property contracted to be sold. Is A. B. living or dead? If A. B. is living the charge must be commuted and paid before completion. If A. B. is dead the amount due must be paid before completion.

DEATH WITHOUT ISSUE.

Where a person is entitled to an equitable interest in land for an estate in fee simple or for any less interest not being an entailed interest or an interest in any other property not being an entailed interest with an executory limitation over on default or failure of issue, whether within any specified period or not, that limitation becomes void if and as soon as there is living any issue who has attained twenty-one of the class on default or failure whereof the limitation was to take effect (*c*).

This applies to limitations of land for an estate in fee or for a term of years absolute or determinable on life or for a term of life as regards instruments coming into operation after 1882. As regards other limitations, it applies only to instruments coming into operation after 1925 (*d*). It does not apply to an estate tail or to an entailed interest; but, of course, any executory limitation over in defeasance of an entailed interest can at once be barred by a tenant in tail or person entitled to an entailed interest in possession.

(*a*) Land Registration Act, 1925, s. 73 (1), (15), (16).
(*b*) *Ibid.* s. 73 (2).
(*c*) Law of Property Act, 1925, s. 134 (1).
(*d*) *Ibid.* s. 134 (2).

DEED.

Where an individual executes a deed after 1925, he must either sign or place his mark upon the same, and sealing alone is not sufficient (*n*). No signature was necessary before 1925 apart from the Statute of Frauds, and it is doubtful whether it was even necessary when the subject-matter was within that statute.

A person may take an immediate or other interest in land or other property or the benefit of any condition, right of entry, covenant or agreement over or respecting land or other property although he may not be named as a party to the conveyance or instrument (*o*). A deed between parties has the effect of an indenture though not indented or expressed to be an indenture (*p*), and any deed may and should after 1925, whether or not an indenture, be described simply as a deed or as a conveyance, further assurance, deed of exchange, vesting deed, subsidiary vesting deed, trust instrument, settlement, mortgage, charge, legal charge, further charge, transfer of mortgage, appointment, lease, power of attorney or otherwise according to the nature of the transaction intended to be effected (*q*).

A reservation of a legal estate will after 1925 operate at law without any execution of the conveyance or lease by the grantee of the legal estate out of which the reservation is made or any regrant by him so as to create the legal estate reserved and so as to vest the same in the person (whether the grantor or not) for whose benefit the reservation is made (*r*). Prior to 1926 such a reservation could be made to operate by means of the Statute of Uses, otherwise the deed required strictly to be executed by the grantee so that the reservation might operate as a regrant. All such regrants would in any case operate in equity, and the general getting-in of legal estates at the commencement of 1926 will make them operate at law. A conveyance or lease of a

(*n*) Law of Property Act, 1925, s. 73.
(*o*) *Ibid.* s. 56 (1).
(*p*) *Ibid.* s. 56 (2).
(*q*) *Ibid.* s. 57.
(*r*) *Ibid.* s. 65 (1).

legal estate expressed to be subject to another legal estate not in existence immediately before the date of the conveyance or lease will operate as a reservation unless a contrary intention is shown (*s*). A deed containing a declaration by the estate owner that his estate shall go and devolve in such a manner as may be requisite for confirming any interests intended to affect his estate and capable of subsisting as legal estates which at some prior date were expressed to have been transferred or created, and any dealings therewith which would have been legal and validly transferred or created will, to the extent of the estate of the estate owner (but without prejudice to the restrictions imposed in the case of mortgages), operate so as to give legal effect to the interests so expressed to have been transferred or created and to the subsequent dealings therewith (*t*). The power is exerciseable by a tenant for life or statutory owner, trustee for sale or personal representative, but if exercised by any other person than an absolute owner the leave of the Court is required (*u*), unless, of course, power is given to execute confirmation deeds by the settlement, will or other disposition. A form of confirmation deed is given (*x*).

Requisition.

As the deed of was void in consequence of it will be necessary for the party thereto of the [first] part to execute a deed of confirmation so that the subsequent title may be validated.

DOWER.

On deaths after 1925 dower can only arise if the deceased husband was a lunatic or defective on 1st January, 1926, and unable by reason of his incapacity to make a will, and has died thereafter without having recovered his testamen-

(*s*) *Ibid.* s. 65 (2).
(*t*) *Ibid.* s. 66 (1).
(*u*) *Ibid.* s. 66 (2). (*x*) *Ibid.* 5th Schedule, Form 7.

tary capacity or without his committee or receiver having been discharged (*y*).

Dower may also, of course, have arisen on the death of an intestate prior to 1926.

An infant is deemed to be entitled in possession notwithstanding any subsisting right to dower (not assigned by metes and bounds) affecting the land, and such a right of dower is to be deemed an interest comprised in the subject of the settlement deemed to be subsisting in consequence of the infant being so entitled and coming to the dowress by virtue of the settlement (*z*). This provision is confined to an infant in possession. Apparently land in the hands of any other heir-at-law where dower has not been assigned by metes and bounds is not settled land, and in such a case where the dower has arisen prior to 1926 the concurrence of the heir-at-law of full age and the widow will still be necessary. Where the dower has arisen after 1925 in consequence of the husband being a lunatic or defective, the personal representative of the husband will hold the land in trust for sale and can accordingly make a title (*a*). In the case of an entailed interest in possession it would seem that the wife's right to dower is not preserved. It is provided by the Law of Property Act, 1925 (*b*), that an entailed interest shall devolve upon the persons who would have been successively entitled thereto as the heirs of the body of the tenant in tail or other person or as tenant by the curtesy if the entailed interest had before 1926 been limited by the general law then in force and such law had remained unaffected, but a dowress is not specifically mentioned, and her right can hardly have been revived by the mere provision in the Administration of Estates Act, 1925, that Part IV. is not to affect the devolution of an entailed interest as an equitable interest (*c*).

(*y*) Administration of Estates Act, 1925, s. 51 (2).
(*z*) Settled Land Act, 1925, s. 1 (3).
(*a*) Administration of Estates Act, 1925, s. 33.
(*b*) Sect. 130 (4).
(*c*) Sect. 51 (4).

The practice of setting dower out by metes and bounds seems rather out of date, but it is provided by the Settled Land Act, 1925 (*d*), that where dower has been assigned by metes and bounds the letters of administration or probate granted in respect of the estate of the husband of the dowress shall be deemed a settlement made by the husband. It is conceived that in such a case the wife is then beneficially entitled under a settlement to the possession of the land set out by metes and bounds, and is accordingly a tenant for life within the meaning of the Settled Land Act, 1925.

Requisition.

The property contracted to be sold was assured to the vendor by a personal representative subject to a right to dower. It is assumed that the dower has not been assigned by metes and bounds. It will be necessary for the dowress to concur in the conveyance to the purchaser.

ENTAIL.

In any instrument coming into operation after 1925 an entail can only be created by the words "in tail," "in tail male" or "in tail female" (*e*), or by such other expressions as those by which before 1926 a similar estate tail could have been created by deed in freehold land (*f*).

Almost the only other expressions that availed for this purpose in a deed were "heirs of the body," "heirs male of the body," "heirs female of the body." No serious conveyancer is likely to experiment with any such expression as "in frank marriage."

After 1925 entailed estates can only be created by way of trust, but can be so created in personal estate as well as in real estate (*f*). Where personal estate is after 1925

(*d*) Sect. 1 (4).
(*e*) Law of Property Act, 1925, s. 60 (4).
(*f*) *Ibid.* s. 130 (1).

directed to be held upon trusts corresponding to trusts affecting land in which an entailed interest has been created and is subsisting, such a direction is sufficient to create an entailed interest in personalty (*g*).

It must be borne in mind that, owing to the abolition of the rule in *Shelley's case* (*h*), a limitation to A. for life and after his death to the heirs of the body of A. will, after 1925, no longer give A. an estate tail. A. will in equity be a tenant for life only, and after his death the heir of his body ascertained in accordance with the old law will take by purchase an estate tail which, if not barred, will descend in the same manner as if it had been originally limited to A. (*i*).

Various irregular expressions, such as to A. and his issue, to A. and his children for ever, when applied to realty have been held in the past to create an estate tail when used in a will, although they would not have such an effect when used in a deed. After 1925 all such expressions when applied to realty will operate in equity to create the same interests as if the property affected had been personal estate (*k*).

Where personal chattels are settled without reference to settled land on trusts creating an entailed interest therein, the trustees, with the consent of the usufructuary for the time being, if of full age, may sell the chattels or any of them, and the net proceeds of sale will then devolve in the same manner as the chattels (*l*); but where such chattels are settled so as to devolve with settled land or are settled together with land or upon trusts declared by reference to the trusts affecting land, then the tenant for life of the settled land may sell the chattels or any of them (*m*), but the consent of the Court is in this case necessary (*n*). The proceeds of sale devolve in the same manner as the chattels

(*g*) Law of Property Act, 1925, s. 130 (3).
(*h*) *Ibid.* s. 131.
(*i*) *Mandeville's Case,* Co. Litt. 26b.
(*k*) Law of Property Act, 1925, s. 130 (2).
(*l*) *Ibid.* s. 130 (5).
(*m*) Settled Land Act, 1925, s. 67 (1).
(*n*) *Ibid.* s. 67 (3).

sold and may with the consent of the Court be invested in the purchase of other chattels (*o*).

A tenant in tail, including a tenant in tail after possibility of issue extinct and a tenant in tail who is by Act of Parliament restrained from barring or defeating his estate tail, and although the reversion is in the Crown (but not including such a tenant where the land in respect whereof he is so restrained was purchased with money provided by Parliament in consideration of public services), where he is of full age and his estate or interest is in possession, has the powers of a tenant for life under the Settled Land Act, 1925 (*p*).

An estate tail is barred or a base fee is enlarged by a simple conveyance. In the case of land, if a vesting instrument has not been executed, the conveyance after 1925 should not be made by A. to B. to the use of A., for, in consequence of the repeal of the Statute of Uses, such a conveyance might vest the legal estate in B. in trust for A. unless B. disclaimed, and then it might be altogether ineffectual. The conveyance should be made simply by A. to A.

No disentailing assurance executed after 1925 requires enrolment in the Central Office (*q*).

A tenant in tail of full age (other than one who is restrained by statute from barring or defeating his estate tail) by will executed or confirmed or republished by codicil after 1925 has power, by means of a devise or bequest specifically referring either to the property or to the instrument under which it was acquired or to entailed property generally, to dispose by will of all property of which he is tenant in possession (*r*). The power extends to an owner of a base fee in possession who has power to enlarge the base fee without the concurrence of any other person, but not to a tenant in tail after possibility of issue extinct. An entailed interest, if disposed of by will, vests in the testa-

(*o*) *Ibid.* s. 67 (2) and (3).
(*p*) Sect. 20 (1) (i).
(*q*) Law of Property Act, 1925, s. 133.
(*r*) *Ibid.* s. 176.

tor's personal representative (*s*) and is liable for the testator's debts (*t*).

A contract to sell an entailed interest in possession where the vendor has power to vest in himself or the purchaser the fee simple or term of years is deemed to extend to the whole fee simple or term (*u*).

A contract to sell by a tenant in tail in possession would not operate as a disentail, but such a contract would be binding on every successor in title to the tenant in tail (*x*).

Requisitions.

1. *As the vendor was tenant in tail in possession at the commencement of* 1926, *a proper vesting deed ought to have been executed, and it appears doubtful, therefore, having regard to sect.* 13 *of the Settled Land Act,* 1925, *whether he can now convey the legal estate in fee simple to the purchaser.*

2. *A vesting deed should be executed and followed by a disentailing deed and a discharge.*

EQUITABLE INTERESTS.

The law applicable to dealings with equitable things in action which regulates the priority of competing interests applies to dealings with equitable interests in land, capital money and securities for capital money effected after 1925 whether or not the money is in Court (*y*).

Notice must consequently be given when any such interest is conveyed or mortgaged after 1925. The persons to be served with the notice in the case of settled land or capital money, or securities representing capital money, are

(*s*) Administration of Estates Act, 1925, s. 3.
(*t*) *Ibid.* 1st Schedule.
(*u*) Law of Property Act, 1925, s. 42 (4) (iii).
(*x*) Settled Land Act, 1925, s. 90 (2).
(*y*) Law of Property Act, 1925, s. 137 (1).

the trustees of the settlement, or in the case where the interest is created by a derivative settlement, the trustees of the derivative settlement (*z*).

In the case of dealing with an equitable interest in the proceeds of sale of property, the trustees for sale are the persons to be served (*a*). In any other case the estate owner must be served (*b*).

The notice must be in writing, otherwise it will not affect competing claims (*c*).

If the trustees are not persons to whom a valid notice can be given or there are no trustees, or for any other reason a valid notice cannot be served, the purchaser or mortgagee may at his own cost require a memorandum of the dealing to be endorsed, written on or permanently annexed to the instrument creating the trust and such instrument produced to prove that a sufficient memorandum has been placed or annexed thereon (*d*); the memorandum then operates as notice (*d*). In the case of settled land the memorandum must be placed on or annexed to the trust instrument and not the vesting instrument, and where land is held on trust for sale the memorandum must be placed on or annexed to the instrument whereby the equitable interest was created (*e*).

Where the trust is created by statute or operation of law and in any other case where there is no instrument whereby the trusts are declared, the instrument under which the equitable interest was acquired or which is evidence of the devolution thereof is to be deemed the instrument creating the trust (*f*).

Priorities acquired before 1926 are not affected (*g*).

Where a notice in writing has been served on trustees, it must be passed on to the successive trustees (*h*).

(*z*) *Ibid.* s. 137 (2) (i).
(*a*) *Ibid.* s. 137 (2) (ii).
(*b*) *Ibid.* s. 137 (2) (iii).
(*c*) *Ibid.* s. 137 (3).
(*d*) *Ibid.* s. 137 (4).
(*e*) *Ibid.* s. 137 (5).
(*f*) *Ibid.* s. 137 (6).
(*g*) *Ibid.* s. 137 (7).
(*h*) *Ibid.* s. 137 (8).

The liability of the estate owner of the legal estate affected to produce documents and furnish information to persons entitled to equitable interests therein corresponds to the liability of a trustee for sale so to do (*i*). These provisions as to notice only apply where a trust has been created (*k*). They do not apply, for instance, to the ordinary case where an estate owner creates an equitable mortgage or charge. The priority of all such mortgages after 1925, not being mortgages secured by a deposit of documents relating to the legal estate affected, is settled by the date of their registration as land charges under the Land Charges Act, 1925 (*l*). In the case of land in Yorkshire, registration of an equitable charge in the local registry operates as registration under the Land Charges Act, 1925 (*m*).

Any settlement or other instrument creating a trust may nominate a trust corporation to whom notices of dealings may be given, and in default thereof the trustees or the Court may make the nomination (*n*).

The name of the trust corporation to whom notices may be given must be endorsed on any instrument on which notices may be endorsed (*o*), and notice to the trust corporation operates in the same way as a notice to trustees or an endorsement (*p*). Where a trust corporation is authorised to receive notices such notices alone are effectual (*q*).

Requisitions.

1. *The intended [mortgagee] will require a statement in writing by the trustees of the settlement that they have received no notice of any dealing with the intended [borrower's] interest under the settlement.*

2. *A statement in writing by the estate owner that*

(*i*) Law of Property Act, 1925, s. 138 (9).
(*k*) *Ibid.* s. 138 (10).
(*l*) *Ibid.* s. 97.
(*m*) Sect. 10 (6).
(*n*) Law of Property Act, 1925, s. 138 (1).
(*o*) *Ibid.* s. 138 (2).
(*p*) *Ibid.* s. 138 (3).
(*q*) *Ibid.* s. 138 (4).

he has received no notice of any dealing with the trust declared in favour of the [vendor] must be handed over on completion.

3. *As there do not appear to be any trustees of the settlement for the purposes of the Settled Land Act, 1925, the purchaser will require notice of the assurance to him to be annexed to the trust instrument and the trust instrument afterwards produced to show that the notice has been permanently annexed to it.*

GLEBE LANDS.

After 1925 a sale of glebe lands or of any easement, right or privilege over or in relation to glebe lands can be made wholly or partly in consideration of a perpetual or of a terminable rent consisting of principal and interest combined, payable yearly or half-yearly, to be secured upon the land sold or the land to which the easement, right or privilege is annexed in enjoyment; but in the case of a terminable rent, the part attributable to principal and that attributable to interest must be distinguished. The part attributable to principal is to be treated as purchase-money arising from the sale of the glebe land and payable accordingly (*r*). A nominal or other rent less than the rent ultimately payable may be made payable during any period not exceeding five years from the date of the conveyance (*s*).

HEIRS.

The well known rule in *Shelley's case* was that if an estate of freehold was limited to A. and afterwards, either mediately or immediately, by the same instrument an estate was limited to his heirs or the heirs of his body, then,

(*r*) Law of Property Act, 1922, s. 43 (1), (8).
(*s*) *Ibid.* s. 43 (2), (8).

subject to any intervening estates, there was vested in A. an estate in fee simple or in tail in the same way as if the ultimate estate had been limited to A. and his heirs or to A. and the heirs of his body. The rule only applied where the estate limited to A. and the estate limited to his heirs were both legal or both equitable (*t*).

The rule still applies to instruments executed before 1926. After 1925 the rule in *Shelley's case* is abolished (*u*).

A conveyance to A. for life and after his death to his heirs will no longer give A. an estate in fee simple. It will not in fact operate to pass any legal estate at all, as it effects a settlement and does not comply with the provisions of the Settled Land Act, 1925, as to the method of making a settlement of a legal estate (*x*). A. will be entitled to have a vesting deed made in his favour by the trustees of the settlement (*y*) as soon as trustees have been appointed, but it will be necessary to apply to the Court for their appointment, if, as would almost certainly be the case, the conveyance does not appoint such trustees (*z*). The person beneficially entitled after A.'s death would be the heir-at-law of A. under the general law in force before 1926 (*a*).

A similar result will follow in the case of a limitation to A. for life and after his death to the heirs of his body. Here A. will not take an estate tail, but the heir of his body after his death will be beneficially entitled presumably to an estate tail descending in the same manner as if it had been originally limited to A. (*a*).

These results would so rarely be intended that it seems hardly too much to say that after 1925 the words "heirs" and "heir" might usefully be struck out of the lawyer's vocabulary so far as legal documents executed after that date are concerned. It is much simpler to use the words "in tail" or "in tail male" than the words "and the heirs

(*t*) *Shelley's case*, 1 Rep. 93b.
(*u*) Law of Property Act, 1925, s. 131.
(*x*) Settled Land Act, 1925, s. 4 (1).
(*y*) *Ibid.* s. 9 (1) (iii) and (2).
(*z*) *Ibid.* s. 9 (3).
(*a*) Law of Property Act, 1925, s. 131.

of his body" or "and the heirs male of his body" in cases where it is desired to entail property, and although it is conceived that a conveyance to A. and his heirs will after 1925 still give A. a fee simple, the reference to A.'s heirs is quite meaningless where the heir has ceased to have any special privilege or advantage with regard to the property on A.'s death.

In many professionally-drafted wills executed before 1926 the rule in *Shelley's case* will have been relied upon, and where the testator has died after 1925 a different interpretation to that originally intended by the draftsman will be put on an ultimate limitation to the heirs of a devisee.

Requisition.

Although there are now no intermediate estates between that limited to A. and that limited to his heirs, as the instrument containing the limitation came into operation after 1925, *the word "heirs" operates as a word of purchase. The property is accordingly settled land and a title must be made under the Settled Land Act,* 1925, *after a proper vesting instrument has been executed. The purchase-money must be paid to the trustees of the settlement.*

INFANTS.

After 1925 no legal estate can be vested in an infant either beneficially or as trustee or as mortgagee or as personal representative of a deceased person. What becomes of the legal estate if, immediately before the 1st January, 1926, it was vested in an infant is fully explained under the heading "Legal Estates."

After 1925, a conveyance to an infant or to two or more persons, all of whom are infants, operates only as an agreement for valuable consideration to execute a settlement by means of a principal vesting deed and a trust instrument

in favour of the infant or infants, and in the meantime to hold the land in trust for the infant or infants (*b*), no legal estate passes.

If the conveyance to one or more infants is upon any trusts, the conveyance operates merely as a declaration of trust (*c*).

If a mortgage is made to or transferred to an infant or infants, the mortgage or transfer merely operates as an agreement for valuable consideration to mortgage or transfer the mortgage to the infant or infants on their attaining full age, and in the meantime to hold the mortgage debt in trust for the infant or infants (*d*).

If a conveyance is made to a person or persons of full age jointly with an infant or infants, the person or persons of full age alone take the legal estate which he or they hold upon trust for sale, the beneficial interest of the infant in the proceeds of sale not being affected (*e*). If the conveyance would, if the infant or infants were of full age, have made the person or persons of full age and infant or infants joint tenants for life, the conveyance is in fact a settlement and the person or persons of full age alone have the powers of a tenant for life (*f*). If trusts are declared in a conveyance to persons of full age jointly with infants, the persons of full age are alone trustees (*g*).

If a mortgage is made to persons of full age jointly with infants, the persons of full age alone take the legal estate without prejudice to any beneficial interest of the infants in the mortgage money (*h*).

After 1925 the appointment of an infant to be a trustee in relation to any settlement or trust is void, but without prejudice to the power to appoint a new trustee to fill the vacancy (*i*).

(*b*) Settled Land Act, 1925, s. 27 (1).
(*c*) Law of Property Act, 1925, s. 19 (5).
(*d*) *Ibid.* s. 19 (6).
(*e*) *Ibid.* s. 19 (1).
(*f*) Settled Land Act, 1925, s. 19 (3).
(*g*) Law of Property Act, 1925, s. 19 (5).
(*h*) *Ibid.* s. 19 (6).
(*i*) *Ibid.* s. 20.

If an infant is appointed an executor the appointment will not operate to transfer any interest in the property of the deceased to the infant or to constitute him a personal representative for any purpose unless or until probate is granted to him after he has attained full age (*k*). Where an infant is appointed or becomes sole executor of a will, administration with the will annexed is to be granted to his guardian or such other person as the Court thinks fit until the infant attains twenty-one, when probate may be granted to him (*l*).

An infant who before the 1st January, 1926, was a trustee or executor does not apparently cease to be trustee or executor, but a new trustee can be appointed in the place of the infant trustee (*m*). In the case where an infant is an executor, probate will not have been granted to him (*n*), and his co-executor or co-executors who have proved the will may act even with regard to real estate (*o*) and chattels real (*p*), and the fact that the infant technically remains an executor until probate is granted after he attains twenty-one is consequently not material. Any legal estate which may be vested in the infant on the 1st of January, 1926, as trustee or personal representative will be vested in his co-trustees or co-trustee or co-executors or co-executor (*q*), or, if there are none, in the Public Trustee (*r*), until the appointment of a new trustee in place of the infant or the grant of letters of administration *durante minore ætate*.

A married infant has power after 1925 to give a receipt for all income (including statutory accumulations during minority) to which the infant may be entitled in like manner as if the infant were of full age (*s*). Where an

(*k*) Supreme Court of Judicature Act, 1925, s. 165 (2).
(*l*) *Ibid.* s. 165 (1).
(*m*) Trustee Act, 1925, s. 36 (1).
(*n*) Administration of Estates Act, 1798, s. 6.
(*o*) *Ibid.* s. 2 (2).
(*p*) *Ibid.* s. 55 (1) (xix).
(*q*) Administration of Estates Act, 1925, 1st Schedule, Part III. para. (4).
(*r*) *Ibid.* para. (3).
(*s*) Law of Property Act, 1925, s. 21.

infant dies after 1925 without having been married equitably entitled under a settlement or will to a vested estate in fee simple or absolute interest in freehold land or in any property settled to devolve therewith, the settlement or will is to be construed as though the infant had an entailed interest (*t*). Such property will not accordingly pass to the infant's personal representative and cannot be disposed of by the infant's will, even though he is in military or naval service. It is conceived that as the Administration of Estates Act, 1925, gives the same meaning to a settlement as in the Settled Land Act, 1925, that if property has been conveyed direct to an infant or he has acquired it as heir-at-law to an intestate before 1925, it will be within this provision by reason of the extended definition of settlement contained in the Settled Land Act, 1925 (*u*).

Requisitions.

1. *As the conveyance to the vendor was executed before he was of full age, no legal estate passed, and it will be necessary for the person or persons now entitled to the legal estate to join in the conveyance to the purchaser.*

3. *As the property was assured to the vendor and his partner B., an infant, the vendor holds the property in trust for sale; but as a single trustee cannot give a receipt for capital money arising under a trust for sale, it will be necessary for the vendor to appoint another trustee.*

JOINT TENANTS.

Where a legal estate (not being settled land) is limited beneficially to or held in trust for any persons as joint tenants, it is to be held in trust for sale in the like manner as if the persons beneficially entitled were tenants in

(*t*) Administration of Estates Act, 1925, s. 51 (3).
(*u*) Sect. 1 (ii) (d).

common, but not so as to sever their joint tenancy in equity (*x*). A joint tenant can still release his interest to the other joint tenants, but cannot sever the legal estate (*y*). He can by notice in writing to the other joint tenants of his desire to sever the joint tenancy, or by doing such other acts or things as would sever the tenancy in equity in the case of personal estate (for instance by assigning his share), sever the tenancy in equity (*y*).

Having regard to the fact that in the case of land a sole trustee for sale (other than a trust corporation) is deprived of the right to give a receipt for capital moneys (*z*), it appears doubtful if a sole survivor of two or more joint tenants can after 1925 make a valid disposition of land and give a receipt for the purchase-money without first appointing a trustee to act with him. It is conceived, however, that when a purchaser has no notice of any trust or of any severance in equity of the joint tenancy, the purchaser will be entitled, as before 1926, to assume that the surviving joint tenant is beneficially entitled and to act accordingly.

Where the joint tenants are mortgagees, the purchaser can certainly deal with the survivor without investigating the title to the mortgage debt or the appointment or discharge of trustees in reference thereto, even although the purchaser has notice that the mortgage money is trust money (*a*). But it appears to be one of the essential principles of the new legislation that a sole trustee of land for sale (other than a trust corporation) shall not be able to give a valid receipt for capital money (*b*), so that it does not seem to be safe where there is any suspicion that a trust exists to pay capital money to the survivor of two or more joint tenants.

(*x*) Law of Property Act, 1925, s. 36 (1).
(*y*) *Ibid.* s. 36 (2).
(*z*) *Ibid.* s. 27 (2).
(*a*) *Ibid.* s. 113.
(*b*) *Ibid.* s. 27 (2); and Trustee Act, 1925, s. 14 (2).

Where one or more of the joint tenants are infants, the infants can be neglected (*c*), and if all the joint tenants are infants the conveyance operates as a declaration of trust (*d*); but in both these cases capital money cannot safely be paid to a sole trustee other than a trust corporation.

Requisitions.

1. *The vendor being the survivor of two joint tenants, the purchaser must be satisfied that the joint tenancy was not severed and that the vendor is now beneficially entitled to the entirety.*

2. *As the conveyance was made to the vendor and his late partner as joint tenants in trust for the partners as part of their partnership estate, the vendor is a trustee for sale, but he must appoint an additional trustee to enable a valid receipt to be given for capital money arising from the sale of land.*

LEASES AND TENANCIES.

The doctrine of *interesse termini*, in consequence of which a lessee did not acquire an estate in the land until possession was taken, is abolished after 1925 (*e*). After that year all terms of years, whenever created, take effect according to the estate or interest of the grantor without actual entry (*f*).

A term at a rent or in consideration of a fine limited after 1925 to take effect more than twenty-one years from the date of the instrument purporting to create it is void, as also is a contract after that year to create such a term. This does not apply to any term taking effect in equity under a settlement or created out of an equitable interest under a settlement or under an equitable power for mortgage, indemnity or other like purposes (*g*).

(*c*) Law of Property Act, 1925, s. 19 (5).
(*d*) *Ibid.* s. 19 (4).
(*e*) *Ibid.* s. 149 (1).
(*f*) *Ibid.* s. 149 (2).
(*g*) *Ibid.* s. 149 (3).

The rule of law that a legal term, whether or not a mortgage term, may be created to take effect in reversion expectant on a longer term is expressly confirmed (*h*).

Wherever a reversion expectant on a lease has been surrendered or merged after the 1st October, 1845, the estate or interest which against the lessee for the time being confers the next vested right to the land, is deemed the reversion for the purpose of preserving the same incidents and obligations as would have affected the original reversion (*i*).

The rent and benefit of the lessee's covenants and the right to take advantage of every condition of re-entry or other condition therein contained runs with the reversion no matter when the lease was made. If the owner of the reversion acquired it after 1925, but not otherwise, he may recover any rent, enforce any covenant, or take advantage of any condition, notwithstanding that he became entitled after the condition of re-entry or forfeiture became enforceable (*k*). The burden of the lessor's covenants also runs with the reversion no matter when the lease was made (*l*).

Where the lease was made before 1882 and the reversion was severed or the term ceased as to part of the land before 1926, the common law, which makes a condition for re-entry indivisible, still applies subject to the old statutory right to enforce a condition for re-entry on non-payment of a legally apportioned rent (*m*). But in every other case rent, covenants, conditions and rights of re-entry incident to the reversion are apportionable in like manner as if the land comprised in each severed part or the land as to which the term remains subsisting, as the case may be, had alone been comprised in the lease (*n*).

A right of re-entry includes a right to determine the lease by notice to quit or otherwise, but where the notice

(*h*) *Ibid.* s. 149 (5).
(*i*) *Ibid.* s. 139.
(*k*) *Ibid.* s. 141.
(*l*) *Ibid.* s. 142.
(*m*) Law of Property Amendment Act, 1859, s. 3.
(*n*) Law of Property Act, 1925, s. 140 (1).

is served by a person entitled to a severed part of the reversion so that it extends to part only of the land demised, the lessee may within one calendar month determine the lease in regard to the rest of the land by giving the owner of the reversionary estate therein a counter-notice expiring at the same time as the original notice (*o*).

The law as to the effect of licenses granted to lessees (*p*), exacting fines for licenses to assign (*q*), and as to relief against forfeiture of leases and underleases (*r*), appears in the main to be unaltered, but after 1925 the relief extends to covenants against assigning, underletting and parting with possession, or disposing of the land leased, and power is given to the Court to relieve a lessee against unreasonable notices to effect internal decorative repairs (*s*). The law as to waiver of covenants (*t*) and giving notice of ejectment actions (*u*) is also left unaltered. It is also confirmed that a lease may be surrendered without prejudice to underleases with a view to the grant of a new lease (*x*).

The provisions of the Conveyancing Acts, 1881 and 1882, permitting long terms to be enlarged are re-enacted with slight amendments (*y*). In particular a rent not exceeding the yearly sum of 1*l*. which has not been collected or paid for a continuous period of twenty years or upwards is for the purpose of enlargement deemed to have ceased to be payable provided that at least five years have elapsed after 1925 (*z*).

The enlargement may be made by—

(1) Any person beneficially entitled in right of the term, whether subject to any incumbrance or not, to possession of any land comprised in the term; and in case of a married woman without the concurrence of her husband, notwithstanding it may not be her

(*o*) Law of Property Act, 1925, s. 140 (2).
(*p*) *Ibid.* s. 143.
(*q*) *Ibid.* s. 144.
(*r*) *Ibid.* s. 146.
(*s*) *Ibid.* s. 147.
(*t*) *Ibid.* s. 148.
(*u*) *Ibid.* s. 145.
(*x*) *Ibid.* s. 150.
(*y*) *Ibid.* s. 153.
(*z*) *Ibid.* s. 153 (4).

separate estate or she may be restrained from anticipation.

(2) A trustee for sale or person in receipt of the income as a trustee. This includes a tenant for life.

(3) A personal representative in whom the term is vested (*a*).

Where any land comprised in the term has been settled in trust by reference to freehold land and at the time of enlargement the ultimate beneficial interest has not become absolutely vested in any person free from charges or powers of charging under the settlement, it is to be conveyed and settled by means of a subsidiary vesting instrument in like manner as the freehold land (*b*).

The estate acquired by enlargement includes mines and minerals which have not been severed in right or in fact or have not been severed or reserved by any inclosure award (*c*).

Any lease or underlease at a rent or in consideration of a fine for life or lives or for any term of years determinable with life or lives or on the marriage of the lessee, or any contract therefor, made at any time or created by the Law of Property Act, 1922, in the case of copyholds, takes effect as a lease, underlease or contract therefor, for a term of ninety years determinable on the events originally provided for by at least one calendar month's notice to determine the same on one of the quarter-days applicable to the tenancy, or, if no quarter-days are specially applicable, on one of the usual quarter-days. In the case of enfranchised copyholds, the person in whom the lease is vested is to be deemed an original lessee. The provisions do not apply to any term taking effect in equity under a settlement or created out of an equitable interest under a settlement for mortgage indemnity or other like purposes (*d*).

(*a*) *Ibid.* s. 153 (6).
(*b*) *Ibid.* s. 153 (9).
(*c*) *Ibid.* s. 153 (10).
(*d*) *Ibid.* s. 149 (6).

Land comprised in a perpetually renewable lease which was subsisting at the commencement of 1926 vested in the person entitled to such lease for the term of 2,000 years, to be calculated from the commencement of the current term, at the rent and subject to the lessee's covenants and conditions (if any) which would have been payable or enforceable during the current term (*e*).

The rent, covenants, conditions and power of re-entry continue payable and enforceable throughout the 2,000 years (*f*).

In the case of perpetually renewable underleases the term is one day less than the term out of which the underlease was derived. If the underlease was created out of a perpetually renewable head-lease the term is 2,000 years less one day (*g*).

The definition of a perpetually renewable lease or underlease is: a lease or underlease, the holder of which is entitled to enforce (whether or not subject to any condition) the perpetual renewal thereof, and includes a lease or underlease for a life or lives or for a term of years, whether determinable with life or lives, which is perpetually renewable as aforesaid, but does not include copyhold land held for life or lives or for years, whether or not determinable with life, where the tenant had before the commencement of 1926 a perpetual right of renewal subject or not to the fulfilment of any condition (*h*).

In the case of copyholds, where the tenant is entitled to a perpetually renewable lease, he acquires a fee simple (*i*).

The term or sub-term created is subject to all the trusts, powers, limitations and equities applicable to that which it replaces (*k*).

A disposition after 1925 purporting to create a perpetually renewable lease takes effect as a demise for a term of 2,000 years, or, in the case of a sub-demise, for a term

(*e*) Law of Property Act, 1922, 15th Schedule, para. 1 (1).
(*f*) *Ibid.* para. 1 (2). (*g*) *Ibid.* para. 2.
(*h*) Law of Property Act, 1922, s. 190 (iii).
(*i*) *Ibid.* 12th Schedule, 8 (e).
(*k*) *Ibid.* 15th Schedule, para. 3.

less by one day than the original demise (*l*). Existing contracts may be satisfied accordingly (*m*), and similarly with future contracts (*n*).

Any contract after 1925 for renewal of a lease or underlease for a term exceeding sixty years from the termination of the lease or underlease (not being a contract for perpetual renewal) is void (*o*).

Powers to grant perpetually renewable leases or underleases become corresponding powers to grant leases or underleases for terms not exceeding 2,000 years (*p*).

Powers to grant a lease or underlease at a rent or in consideration of a fine for life or lives, or for any term determinable with life or lives or on the marriage of any person, become powers to grant a lease or underlease for ninety years correspondingly determinable by either party on one calendar month's notice after the determining event on one of the usual quarter-days (*q*).

Leases under sect. 44 and powers conferred by sect. 40 of the Small Holdings and Allotments Act, 1908, are not affected by any of these provisions.

Every lease or underlease taking effect for a term of 2,000 years or for 2,000 years less one or more days in lieu of a perpetually renewable lease or underlease is deemed to contain:—

(1) A power for the lessee or underlessee, with the consent of any persons interested in any derivative lease which might be prejudicially affected, to determine by ten days' notice the lease or underlease at any time when it would have expired or any renewed lease would have expired.

(2) A covenant by the lessee or underlessee to register assignments and devolutions with the lessor or his solicitor or agent and pay a fee of 1*l*. 1*s*. 0*d*. in respect of such registration.

(3) A covenant to produce the lease or underlease with

(*l*) *Ibid.* para. 5.
(*m*) *Ibid.* para. 6.
(*n*) *Ibid.* para. 7 (1).
(*o*) *Ibid.* para. 7 (2).
(*p*) *Ibid.* para. 8 (1).
(*q*) *Ibid.* para. 8 (2).

any particulars to show that a perpetual right of renewal was subsisting at the commencement of 1926 to the lessor or his solicitor or agent, who is, if the right to renewal is admitted, to endorse notice thereof on the lease, underlease or assignment, or copy thereof, which endorsement is to be sufficient evidence of the right of renewal in favour of a purchaser (*r*).

The Minister of Agriculture and Fisheries is to settle disputes (*s*).

In the case of every term or sub-term created by the Law of Property Act, 1922, or under any power created by Part VII. of the Act (which includes the Fifteenth Schedule), each lessee or underlessee, although he may be the original lessee, is, notwithstanding any stipulation to the contrary, to be liable for rent accruing and the breach of covenants and conditions only while he or his personal representatives have the term or sub-term vested in him or them (*t*).

Requisitions.

1. *Has any notice to quit been served by the vendor in respect of any part of the land comprised in the tenancy? If so, has any counter-notice by the tenant determining the whole tenancy been received?*

2. *Does the lessor admit that a perpetual right of renewal was subsisting at the commencement of* 1926? *For the purpose of proving that the right is admitted, the vendor must produce the lease to the lessor or his solicitor or agent and obtain the statutory endorsement.*

(*r*) Law of Property Act, 1922, 15th Schedule, para. 10 (1).
(*s*) *Ibid.* para. 10 (2).
(*t*) *Ibid.* para. 11.

LEGAL ESTATES.

Legal estates are made the basis of the new system of conveyancing introduced by the legislation of 1925, and as there was a general extinguishment and shifting of legal estates on the 1st January, 1926, it is of the utmost importance in investigating a title to determine what legal estates were then extinguished, what estates shifted, and when they shifted who became entitled to them.

The importance of getting in the legal estate is increased by the provision that any stipulation contained in any contract for the sale or exchange of land made after 1925 to the effect that an outstanding legal estate shall be traced or got in by or at the expense of a purchaser, or that no objection is to be taken on account of an outstanding legal estate, is void (*u*), so that if a purchaser neglects on any purchase to get in the legal estate he will after 1925 be bound to bear the expense of tracing and getting it in on reselling or exchanging the land, no matter what conditions he may make in his contract for sale or exchange.

(i) *Legal Estates and Interests which can subsist after* 1925.

Only two legal estates are capable of subsisting or of being created in land after 1925 (*x*):—

(1) A fee simple.
(2) A term of years.

Only five interests or charges in or over land are capable of subsisting or being created after 1925 (*y*):—

(1) An easement, right or privilege in or over land for an interest equivalent to an estate in fee simple or term of years.
(2) A rentcharge in possession issuing out of or charged on land, being either perpetual or for a term of years.

(*u*) Law of Property Act, 1925, s. 42 (3).
(*x*) *Ibid.* s. 1 (1).
(*y*) *Ibid.* s. 1 (2).

(3) A charge by way of legal mortgage.

(4) Land tax, tithe rentcharge, and any similar charge on land which is not created by an instrument.

(5) Rights of entry exerciseable over or in respect of a legal term of years or annexed to a legal rentcharge.

All other estates, interests and charges in or over land take effect as equitable interests only (*z*).

For brevity, all these estates, interests and charges are referred to in the Law of Property Act, 1925, as "legal estates," and the owner of a legal estate is called an "estate owner" (*a*).

Estates, interests and charges over land which are not legal estates are, in the same Act, referred to as "equitable interests," and powers which operate in equity only are called "equitable powers" (*b*).

All powers of appointment over or powers to convey or charge land, whether created before 1926 or after 1925 (not being powers vested in a mortgagee or estate owner in right of his estate and exerciseable by him or another person in his name or on his behalf), whether created by statute or by any other instrument or implied by law, become accordingly merely equitable powers (*c*).

Legal estates cannot after 1925 exist in undivided shares (*d*), so that tenancy in common, coparcenary and tenancy by entireties in legal estates are all abolished, and no legal estate can be held after 1925 by an infant (*d*). Legal estates can subsist with other legal estates in the same land (*e*). Thus there is no limit to the number of terms which may subsist concurrently in the same land, each taking effect in reversion of the term to which it is subject, and in particular a term may be created to take effect in reversion expectant on a longer term (*f*).

(*z*) Law of Property Act, 1925, s. 1 (3).
(*a*) *Ibid.* s. 1 (4).
(*b*) *Ibid.* s. 1 (8).
(*c*) *Ibid.* s. 1 (7).
(*d*) *Ibid.* s. 1 (6).
(*e*) *Ibid.* s. 1 (5).
(*f*) *Ibid.* s. 149 (5).

There is also no limit to the number of rentcharges which may subsist concurrently, and a rentcharge can be granted, reserved or created out of another rentcharge (*g*). Legal estates for life are altogether abolished, but a lease or underlease, at a rent or in consideration of a fine, for life or lives, or for any term of years determinable with life or lives, or on the marriage of the lessee, whether made before 1926 or after 1925, takes effect as a lease or underlease for ninety years determinable after the dropping of the last life or on the marriage of the lessee by one month's notice on any quarter-day applicable to the tenancy, or if no quarter-day is specially applicable, on one of the usual quarter-days (*h*). Legal estates tail, legal conditional fees, legal remainders, and all the innumerable legal estates that have in the past been capable of being created by means of springing and shifting uses are absolutely abolished after 1925.

(ii) *Conversion of certain existing Legal Estates into Equitable Interests.*

The first step was to get rid of the various legal estates existing on the 31st December, 1925, which were not permitted to subsist as legal estates on the 1st January, 1926. This is accomplished by Part I. of the First Schedule to the Law of Property Act, 1925, whereby it is provided that all estates, interests and charges in or over land, including fees, determinable whether by limitation or condition, which before 1926 were estates, interests or charges subsisting at law or capable of taking effect as such, but which were not capable of taking effect as legal estates after 1925, should, as from the 1st January, 1926, be converted into equitable interests, and should not fail by reason of being so converted nor should the priority of any such estate, charge or interest over other equitable interests be affected.

(*g*) *Ibid.* s. 122 (1).
(*h*) *Ibid.* s. 149 (6).

(iii) *Satisfied Terms.*

The next step is to get rid of satisfied terms.

Such terms when created out of freehold land will, independently of the new legislation, have absolutely ceased and determined upon their becoming satisfied (*i*), but this provision had no application to terms created out of leaseholds; it is accordingly provided that where the purposes of a term of years created or limited out of leasehold land are satisfied on the 1st January, 1926, that term shall merge in the reversion expectant thereon and shall cease accordingly; but where the term was vested in the owner of the reversion, the merger and cesser shall take effect without prejudice to any protection which would have been afforded to the owner for the time being of that reversion had the term remained subsisting (*k*). Where the purposes are satisfied as to part of the land comprised in a term, this provision has effect as if a separate term had been created in respect of that part of the land (*k*). Up to this point the only legal estates in the proper sense of the term which can subsist after 1925 are estates in fee simple and terms of years which have not been satisfied. Such legal estates may not, however, at the commencement of 1926 be vested in the persons equitably entitled to them, and further provisions are accordingly required.

(iv) *Vesting of Legal Estates.*

Where on the 1st January, 1926, any owner of a legal estate is entitled, subject or not to the payment of the costs of tracing the title and of conveyance, to require any other legal estate in the same land to be surrendered, released or conveyed to him so as to merge or be extinguished, the last-mentioned estate is extinguished without prejudice to any protection which would have been afforded to him had that estate remained subsisting (*l*). This applies, for in-

(*i*) Satisfied Terms Act, 1845; Law of Property Act, 1925, s. 5.
(*k*) Law of Property Act, 1925, s. 5 and 1st Schedule, Part II. (1).
(*l*) *Ibid.* Part II. (2).

stance, to the case where a term of years, rentcharge or other legal estate was outstanding in a trustee in trust for the owner of another estate.

Where, on the 1st January, 1926, any person was entitled, subject or not to the payment of the costs of tracing the title and of conveyance, to require any legal estate not vested in trustees for sale to be conveyed to or otherwise vested in him, such legal estate vests as provided by the Law of Property Act, 1925 (*m*).

These provisions are evidently intended to get in every legal estate which is outstanding and has not been destroyed, and in cases where all outstanding legal estates have been destroyed to vest new legal estates in the persons specified. The various cases that may arise are:—

(1) The entirety of an estate may be subject to one or more mortgages.
(2) Subject or not to any such mortgages, the entirety of an estate may be vested in personal representatives.
(3) Subject or not to any such mortgages, the entirety of an estate may be vested in trustees upon trust for sale.
(4) Subject or not to any such mortgage, the entirety of an estate may be subject to a settlement within the meaning of the very wide provisions of the Settled Land Act, 1925 (*n*).
(5) Subject or not to any such mortgage, the entirety of an estate may be vested in several persons beneficially as joint tenants.
(6) Subject or not to any such mortgage, the entirety of an estate may be vested in a single person.
(7) Subject or not to any such mortgage, an estate may be held in undivided shares.

Some of the estates referred to in this classification cannot subsist as legal estates after 1925.

(*m*) *Ibid.* Part II. (3).
(*n*) Sect. 1.

Provision is made for all these cases which will cover practically everything that can occur in practice.

If there are cases not covered, the legal estate, if capable after 1925 of subsisting at law, will remain where it was before 1926 until got in by a vesting order or otherwise; but seeing that all the complicated estates which prior to 1926 could be limited by means of contingent remainders, shifting and springing uses must in general have arisen under some settlement, and that where an infant is beneficially entitled to an estate in fee simple or for a term of years by reason of an intestacy or otherwise, a settlement is deemed to have been made by the intestate or the person whose interest the infant has acquired (*o*) and is deemed to be entitled in possession, notwithstanding any subsisting right of dower not assigned by metes and bounds (*p*), and that where dower has been assigned by metes and bounds a settlement is deemed to be made by the husband, and that the interest of a husband as tenant by the curtesy is deemed to be an estate arising under a settlement made by his wife (*q*), it is difficult to see how any case not provided for can arise.

To deal now with these cases in turn:—

(1) *Mortgages.*

Where land (and this includes a manor, advowson, rent, and an easement, right or privilege over land (*r*)) is vested in a first or only mortgagee for an estate in fee simple, whether legal or equitable (not being an equitable charge unsecured by any estate (*s*)), it vests in a first or only mortgagee for a term of 3,000 years, subject to a provision for cesser corresponding with the right of redemption (*t*).

A second mortgagee, whether legal or equitable, takes a term one day longer than the first mortgagee, and a third

(*o*) Settled Land Act, s. 1 (2).
(*p*) *Ibid.* s. 1 (3).
(*q*) *Ibid.* s. 20 (3).
(*r*) Law of Property Act, 1925, s. 205 (ix).
(*s*) *Ibid.* 1st Schedule, Part II. 6.
(*t*) *Ibid.* Part VII. 1.

mortgagee, whether legal or equitable, takes a term one day longer than the second mortgagee, and so on for any subsequent mortgagees (*u*). A sub-mortgagee, on the other hand, takes a derivate term one day shorter than the principal mortgagee (*v*).

Mortgage and sub-mortgage terms are all without impeachment of waste.

Where leasehold land (*x*) is vested in a first or only mortgagee by assignment of a term of years, it vests in a first or only mortgagee for a term ten days shorter than the original term, subject to a provision for cesser corresponding to the right of redemption (*y*). A second mortgagee takes a term nine days shorter than the original term, and a third mortgagee a term eight days shorter than the original term, and so on, a tenth and any subsequent mortgagee taking a term one day shorter than the original term (*z*).

A sub-mortgagee by assignment takes a term one day less than the principal mortgagee whose mortgage is sub-mortgaged, and a sub-sub-mortgagee, where both the principal mortgage and sub-mortgage were by assignment, would take a term two days less than the principal mortgagee (*a*).

The subject of vesting of mortgages is more fully dealt with under the heading "Mortgages."

(2) *Personal Representatives.*

If land (*b*), subject or not to any mortgage, forms part of the unadministered estate of a deceased person, it vests subject to any mortgage terms in his personal representatives. If a deceased person has no personal representative, the question where it vests is merely academical, as it cannot be safely dealt with till administration is granted. Presumably any legal estate which has not been destroyed will

(*u*) *Ibid.* Part VII. 2.
(*v*) *Ibid.* Part VII. (4).
(*x*) Law of Property Act, 1925, s. 205 (ix).
(*y*) *Ibid.* 1st Schedule, Part VIII. (1).
(*z*) *Ibid.* Part VIII. 2.
(*a*) *Ibid.* Part VIII. 4.
(*b*) Law of Property Act, 1925, s. 205 (ix).

stay where it was until administration is granted. In the case of deaths after 1925 the real and personal estate of an intestate until administration vests in the President of the Probate, Divorce and Admiralty Division of the High Court (*c*).

The subject of vesting of legal estates in personal representatives is more fully dealt with under the heading "Personal Representatives."

(3) *Trustees for Sale.*

If land (*d*), subject or not to any mortgage, is subject to a trust for sale, it vests, subject to any mortgage terms, in the trustees for sale, including personal representatives holding land in trust for sale (*e*).

The subject of vesting of legal estate in trustees for sale is more fully dealt with under the heading "Trusts for Sale."

(4) *Settled Land.*

If land (*d*) is settled, subject or not to any mortgage, and does not form part of the unadministered estate of a deceased person and is not settled upon trust for sale, it vests subject to any mortgage terms:—

(a) In the tenant for life or tenants for life within the meaning of the Settled Land Acts, 1925, or in the person or persons having the powers of a tenant for life under the same Act if more than one as joint tenants.

(b) If there is no tenant for life or person having the powers of a tenant for life, in any person of full age on whom such powers are by the settlement expressed to be conferred.

(c) In any other case in the trustees of the settlement (*f*).

(*c*) Administration of Estates Act, 1925, ss. 9 and 55 (1) (xv).
(*d*) Law of Property Act, 1925, s. 205 (ix).
(*e*) *Ibid.* 1st Schedule, Part II. 6 (b).
(*f*) *Ibid.* Part II. 6 (c); Settled Land Act, 1925, ss. 19 and 23.

The subject of vesting of the legal estate in settled land, other than land settled in trust for sale, is more fully dealt with under the heading "Settled Land."

(5) *Joint Tenants.*

If a legal estate (not being settled land) is beneficially limited to or held in trust for joint tenants, it vests in them subject to any mortgage term, but it is to be held by them on trust for sale in like manner as if they were tenants in common, but not so as to sever their joint tenancy in equity (*g*).

A tenancy by entireties (which was the old form of tenancy created before the Married Women's Property Act, 1882, by a conveyance to husband and wife, and which differed from a joint tenancy as it could not be severed) is converted into a joint tenancy without prejudice to any beneficial interest (*h*). The subject of joint tenancy is more fully dealt with under the heading "Joint Tenants."

(6) *Beneficial Ownership of Entirety.*

A beneficial owner of an entire estate, subject or not to any mortgage, takes the legal estate, subject or not to any mortgage term, created by the Act. He takes the legal estate also if he is entitled to require the legal estate to be vested in him (*i*). Thus any bare outstanding legal estate is got in, and presumably a person was entitled to require the conveyance of a legal estate, and consequently became entitled to it notwithstanding there may have been equitable charges subsisting.

Where a personal representative has fully completed his administration, a devisee might be held to become immediately entitled under this provision, so that it would be dangerous to take a conveyance after 1925 from the personal representative of a testator who died before 1926 with-

(*g*) Law of Property Act, 1925, s. 36.
(*h*) *Ibid.* 1st Schedule, Part VI.
(*i*) *Ibid.* Part II. 6 (d).

out a statement in writing by the personal representative that he has not given or made an assent or conveyance in respect of the legal estate. Such a statement is sufficient evidence in favour of a purchaser that an assent or conveyance has not been given or made (*k*).

The most important case where the provisions that a person entitled to require the conveyance of legal estate gets that estate does not operate is the case where a purchaser has accepted the title and paid his purchase-money before 1926. A conveyance in this case is still necessary (*l*). Similarly a contract to create a legal mortgage is not a mortgage and does not entitle the mortgagee to a legal term (*l*); but a mortgage effected by a covenant to surrender copyholds is treated as an equitable mortgage and entitles the mortgagee to a legal term of years (*m*).

(7) *Undivided Shares.*

If the entirety of the land is vested in the same mortgagees for securing the same mortgage money and the rights of redemption affecting the land are the same as might have been subsisting if the entirety had been mortgaged by an owner before the undivided shares were created, the mortgagees get the same term of years as if the entirety had been mortgaged (*n*).

If the entirety is vested in personal representatives or trustees (whether for sale or not), they take the entirety of the legal estate, subject or not to any mortgage. Mortgagees of undivided shares take no legal estate, and the powers of the personal representatives or trustees override any such mortgages (*o*).

If the entirety of the land is settled land held under one and the same settlement, the trustees of the settlement (if any) take the legal estate (subject or not to any mortgages

(*k*) Administration of Estates Act, 1925, s. 36 (6).
(*l*) Law of Property Act, 1925, 1st Schedule, Part II. 6 (g).
(*m*) Law of Property Act, 1922, 12th Schedule, (1) (f) (i).
(*n*) Law of Property Act, 1925, 1st Schedule, Part IV. 7.
(*o*) *Ibid.* Part IV. 1 (1).

upon trust for sale (*p*). This, presumably, has no application where the same tenant for life holds all the undivided shares, for in such a case the land cannot be said to be held at law or in equity in undivided shares vested in possession.

If the entirety of the land is vested absolutely and beneficially in not more than four persons of full age entitled thereto in undivided shares, then, subject or not to any mortgage, the legal estate vests in them upon trust for sale (*q*).

In any other case the legal estate, subject to any mortgage term, vests in the Public Trustee upon trust for sale, but he is not entitled to act until requested so to do by persons interested in more than a moiety (*r*).

The foregoing provisions do not hold with regard to party walls and other party structures held in undivided shares. These are deemed to be severed vertically as between the respective owners, but the rights of owners are preserved (*s*).

A special provision is also made with regard to open spaces of land (with or without any building used in common for the purposes of the adjoining land) held in undivided shares in right whereof each owner has rights of access and user over the open spaces. Such open spaces vest in the Public Trustee upon trust for sale, but such trust can only be exercised with the leave of the Court, and pending sale the rights of owners are preserved (*t*).

The subject of vesting of legal estates held in undivided shares is more fully dealt with under the heading "Undivided Shares."

In dealing shortly with the seven cases which have been listed, one very important qualification has been omitted.

A mortgagee, personal representative, trustee, tenant for life, joint tenant, beneficial owner or tenant in common may be an infant. In all or any of these capacities an infant prior to 1926 could hold a legal estate, but with few

(*p*) *Ibid.* Part IV. 1 (3).
(*q*) *Ibid.* Part IV. 1 (2).
(*r*) *Ibid.* Part IV. 1 (3) and (4).
(*s*) *Ibid.* Part V. 1.
(*t*) *Ibid.* Part V. 2.

exceptions (*u*) his transactions therewith were voidable on his attaining majority. After 1925 no legal estate can be held by an infant, and the following modifications of the seven cases have accordingly been made:—

Where an infant is sole mortgagee, or sole personal representative, or sole trustee for sale, or sole trustee of any settlement, or sole trustee of any trust, and a legal estate would have become vested in the infant but for this provision, the legal estate and the mortgage debt (if any) and interest thereon vest in the Public Trustee as to the estate upon the trusts and subject to the equities affecting the same and as to the mortgage debt upon such trusts as may be requisite for giving effect to the rights (if any) of the infant or other persons beneficially entitled therein (*x*).

The Public Trustee is not entitled to act without the request in writing of the persons beneficially entitled, which request, in the case of the infant, may be made by his parents, parent or guardian, and those persons may, if no other person is able and willing so to do, appoint new trustees in the place of the Public Trustee, and thereupon the land or mortgage debt vests in the person so appointed (*x*), and a power of appointment is also given to the Court. As the singular includes the plural, these provisions no doubt apply where two or more infants are sole mortgagees, personal representatives or trustees.

If only one or some of the mortgagees, personal representatives or trustees is an infant or are infants and a legal estate would have become vested in the infant or infants but for this provision, the legal estate and the mortgage debt (if any) and interest thereon vest in the mortgagees, personal representatives or trustees as to the estate upon the trusts and subject to the equities affecting the same, and as to the mortgage debt upon such trusts as may be requisite for giving effect to the rights (if any) of the infant or other persons beneficially entitled thereto (*y*).

(*u*) For exceptions, see Investigation of Title, p. 195.
(*x*) Law of Property Act, 1925, 1st Schedule, Part III. 3.
(*y*) *Ibid.* Part III. 4.

As regards settled land, if in any case there are two or more persons entitled as joint tenants and they are not all of full age, such one or more of them as is or are for the time being of full age is or (if more than one) together constitute the tenant for life (*z*), so that the case that has specially to be provided for is where one infant is entitled solely or two infants entitled jointly. Where an infant is beneficially entitled to an estate in fee simple or for a term of years, a settlement is deemed to have been made by the person whose interest he has acquired (*a*).

Where, on 1st January, 1926, an infant is beneficially entitled in possession to an estate in fee simple or term of years, or would if of full age be a tenant for life or have the powers of a tenant for life, the settled land vests in the trustees (if any) of the settlement, or, if there are no such trustees, in the Public Trustee, upon such trusts as may be necessary for giving effect to the rights of the infant and other persons (if any) interested (*b*), but the Public Trustee is not to act until requested by his parents, parent or guardian (*b*).

If there is no other person or persons able and willing to appoint trustees, the parents, parent or guardian of the infant may make the appointment and vest the estate in such trustees, or an appointment and vesting order may be made by the Court on the application of the infant by his next friend (*c*). If the Public Trustee does not act and no appointment is made, the estate vests in the infant on his attaining twenty-one (*d*).

These provisions apply where two or more infants are entitled jointly and beneficially to an estate in fee simple or a term of years (*e*), or where two or more infants, if all of them were of age, would together constitute the tenant for life or have the powers of a tenant for life (*f*).

(*z*) Settled Land Act, 1925, s. 19 (3).
(*a*) *Ibid.* s. 1 (2).
(*b*) *Ibid.* s. 26 (2).
(*c*) *Ibid.* 2nd Schedule, 3 (1) (iv).
(*d*) *Ibid.* 3 (2).
(*e*) *Ibid.* 3 (5).
(*f*) *Ibid.* 3 (6).

If an infant is jointly entitled with one or more other persons beneficially of full age, the land is not settled land, but the legal estate vests in the person or persons of full age upon trust for sale, and where the legal estate so vests in one person as trustee the parents, parent or guardian of the infant may appoint an additional trustee, whereupon the legal estate vests in the additional trustee and existing trustee as joint tenants (*g*).

The case where an infant is solely beneficially entitled has already been dealt with as the land is then settled, and the case where an infant is entitled to any undivided share has also been dealt with as it falls under the comprehensive heading "In any other case,"and the land accordingly vests in the Public Trustee, subject or not to any mortgage term as the case be required.

The investigation of title where infants are concerned generally is dealt with under the heading "Infants."

It will be seen from this short account that on the 1st January, 1926, a great transformation of legal and equitable estates occurred: some legal estates vanished altogether, others were converted into estates of different duration, others were transferred to different persons, and, on the other hand, some equitable estates became legal; but beneficial interests, in accordance with the general scheme of the new legislation have been kept intact. It will, of course, be necessary to abstract the title after 1925 to any equitable estate or interest which is converted into a legal estate on 1st January, 1926, except, of course, legal estates which are clearly overreached. This subject is more fully dealt with under the heading "Abstracts of Title."

Requisitions.

1. *The purchaser will require the outstanding legal estate referred to in Condition to be traced and got in at the vendor's expense. The condition purporting to bind the purchaser to accept an equitable title is not binding on him.*

(*g*) Law of Property Act, 1925, 1st Schedule, Part III. 2.

2. *There appears to be an outstanding legal estate vested in X. This must be got in at the vendor's expense, the condition of sale throwing on the purchaser the expense of getting in outstanding legal estates is not binding on him.*

3. *The trustees who are entitled to a term of years must concur in the conveyance to the purchaser or evidence must be supplied that the term is now satisfied.*

4. *Was A. B., who purports to have been entitled to an estate in fee simple on 1st January, 1926, a trustee for any, and what, other person or persons? If he was only a bare trustee he would apparently lose his legal estate in that case under the Law of Property Act, 1925.*

5. *The full equitable title as existing immediately prior to the 1st January, 1926, must be abstracted so that the effect on the property of the provisions of the Law of Property Act, 1925, relating to the shifting of legal estates can be ascertained.*

LOCAL LAND CHARGES.

A local land charge, as defined by the Land Charges Act, 1925 (*h*), is a charge acquired by any county council, metropolitan or municipal borough council, urban district council, rural district council, or other local authority under the Public Health Acts, 1875 to 1907, the Metropolis Management Acts, 1855 to 1893, or the Private Street Works Act, 1892, or any similar statute (public, general, or local or private) passed, or hereafter to be passed, which takes effect by virtue of the statute. Any such charge does not require registration at the Land Registry (*i*), but requires registration locally by the proper officer of the local authority. Any such charge will be void against a purchaser for money

(*h*) Sect. 15 (1). (*i*) Land Charges Act, 1925, s. 10 (1), Class B.

or money's worth of the legal estate effected, unless registered before the completion of the purchase; but with regard to charges created before 1926 a year's grace is given, so that until the end of 1926 it will not be safe to rely on the register (*k*).

When a local authority has expended money and the work is completed and any requisite resolution has been passed or order made, a charge is deemed to be created and may be registered as a general charge pending the ascertainment of the specific amount, and when the specific amount is ascertained the specific local land charge must be registered as of the date on which the general charge was registered. A time to be prescribed by rules made pursuant to the Land Charges Act, 1925 (*l*), not exceeding one year, is allowed for the duration of the charge in its general form.

Any prohibition of or restriction on the user or mode of user of land or buildings by any local authority by virtue of any statute or order, scheme or instrument, and any resolution passed by a local authority to prepare or adopt a town planning scheme is to be deemed a restrictive covenant, and where arising after 1925 must be registered by the proper officer as a local land charge (*m*).

Inquiry of the local authority will still be necessary after 1925 as to any restriction or town planning scheme arising before 1926, and during the year 1926 as regards any other land charge arising before 1926. In all cases where inquiry would before 1926 have been considered necessary or desirable, a search for local land charges should be made. Rules may be made providing for official searches and fees to be paid therefor and determining the effect of an official search as regards the protection of purchasers and similar matters (*n*).

Registration of a local land charge constitutes actual notice thereof (*o*); but, on the other hand, a purchaser is

(*k*) Land Charges Act, 1925, s. 15 (5).
(*l*) Sect. 15 (4).
(*m*) Land Charges Act, 1925, s. 15 (7).
(*n*) *Ibid.* s. 15 (8).
(*o*) Law of Property Act, 1925, s. 198.

not to be prejudicially affected by notice of any instrument or matter capable of registration which is void or not enforceable against him by reason of non-registration thereof (*p*). A purchaser for this purpose means a purchaser in good faith for valuable consideration (which includes marriage, but not a nominal consideration in money), and includes a lessee, mortgagee or other person who for valuable consideration acquires an interest in property (*q*).

Requisitions.

1. *Is any local charge on the property under the Public Health Act, the Private Street Works Act,* 1892, *or any similar statute, now subsisting?*

2. *Has any resolution been passed by the local authority to prepare or adopt any town planning scheme which comprised or in any way affects the property contracted to be sold?*

LUNATICS AND DEFECTIVES.

If a legal estate is vested in a lunatic or defective either solely or jointly with any other person or persons, his committee or receiver under an order in lunacy or by the Court is to make all requisite dispositions for conveying or creating a legal estate in the name and on behalf of the lunatic or defective (*r*).

If land held on trust for sale is vested in a lunatic or defective, a new trustee must be appointed in his place or he must be otherwise discharged from the trust before the legal estate is dealt with under the trust for sale or under the powers vested in the trustees (*s*).

Power is given to the Court to settle any property of a lunatic or defective upon such trusts and subject to such powers and provisions as the Court may deem expedient (*t*).

(*p*) *Ibid.* s. 199.
(*q*) *Ibid.* s. 205 (1) (xxi).
(*r*) *Ibid.* s. 22 (1).
(*s*) *Ibid.* s. 22 (2).
(*t*) *Ibid.* s. 171.

Any beneficial interest in real estate (not including chattels real) to which a lunatic or defective living and of full age on 1st January, 1926, is entitled, and of which he afterwards dies intestate without having recovered his testamentary capacity, devolves according to the general law in force before the 1st January, 1926, without prejudice to any will of the deceased. A lunatic or defective is not deemed to have recovered his testamentary capacity unless his committee or receiver has been discharged (*u*).

This re-introduces curtesy and dower, but probably not gavelkind, in the case of freeholds in Kent, and certainly not special customs relating to land formerly of copyhold tenure.

Where a tenant for life is a lunatic or defective, his committee or receiver may in his name and on his behalf under an order in lunacy exercise the powers of a tenant for life, and an order may be made on the application of any person interested or of the committee or receiver (*x*).

Requisition.

An order in lunacy or by the Court must be obtained by the committee [receiver] before the conveyance in the name and on behalf of the vendor is completed.

MARRIED WOMEN.

Acknowledgments by married women are abolished after 1925 (*y*), and the separate examination of a married woman is no longer necessary (*z*).

The concurrence of her husband is in general still necessary where such concurrence would have been required before 1926, but the Court, if satisfied that the wife is entitled for her separate use to the property to be dealt

(*u*) Administration of Estates Act, 1925, s. 52 (2).
(*x*) Settled Land Act, 1925, s. 28.
(*y*) Law of Property Act, 1925, s. 167 (1).
(*z*) *Ibid.* s. 167 (2).

with, may declare that the disposition shall have the same effect as if the husband had concurred therein (*a*).

A married woman is declared to have power by deed to disclaim any estate or interest in land with or without the concurrence of her husband as the case may require (*b*); but the husband is not to be a necessary party to any disclaimer by the wife of property which would belong to her for her separate use or property held on trust (*c*).

A married woman can acquire from her husband or from any other person any interest in real or personal estate solely or jointly with any other person, including her husband, as trustee or personal representative as if she were a *feme sole* (*d*).

She can, without her husband, dispose and join in disposing of any interest in real or personal property held by her with any other person (including her husband or not) as trustee or personal representative as if she were a *feme sole* (*e*).

These provisions apply to all women married after 1882 and to any woman married before 1883 who became a trustee or personal representative after 1882 (*f*).

All such transactions after 1882 are confirmed, but where a title has been, through or with the concurrence of the husband, acquired before 1908, that title prevails over any acquired under a transaction rendered valid by these provisions (*g*).

A husband and wife, for the purpose of acquisition of any interest in property under a disposition made or coming into operation after 1925, are to be treated as two persons (*h*). So that after 1925 a grant to A., B. and C., where A. and B. are husband and wife, gives to each of the grantees beneficial ownership to the extent of a third, and not half to A. and B. and half to C. as formerly.

(*a*) *Ibid.* s. 167 (3).
(*b*) *Ibid.* s. 168 (1).
(*c*) *Ibid.* s. 168 (2).
(*d*) *Ibid.* s. 170 (1).
(*e*) *Ibid.* s. 170 (2).
(*f*) *Ibid.* s. 170 (3).
(*g*) *Ibid.* s. 170 (4).
(*h*) *Ibid.* s. 37.

MORTGAGES.

After 1925 a mortgage of freeholds can only be effected at law either by demise for a term of years absolute, subject to a provision for cesser on redemption, or by a charge by deed expressed to be by way of legal mortgage; but a first mortgagee will have the same right to the possession of documents as if his security included the fee simple (*i*).

Any purported conveyance by way of mortgage of an estate in fee simple after 1925 operates in the case of a first mortgage as a demise of the land to the mortgagee for a term of 3,000 years from the date of the mortgage, and in the case of a second or subsequent mortgage as a demise for a term commencing from the date of the mortgage one day longer than the term vested in the mortgagee whose security ranks immediately before that of such second or subsequent mortgagee (*k*).

After 1925 a mortgage of a term of years can only be effected at law either by a sub-demise for a term of years absolute less by one day at least than the term vested in the mortgagor and subject to a provision for cesser on redemption, or by a charge by deed expressed to be by way of legal mortgage; and where a license to sub-demise by way of mortgage is required, such license may not be unreasonably refused, but a first mortgagee will have the same right to possession of documents as if his security had been effected by assignment (*l*).

Any purported assignment of a term of years absolute after 1925 operates in the case of a first mortgage as a sub-demise of the land for a term of years ten days less than the term expressed to be assigned, and in the case of a second or subsequent mortgage as a term one day longer than the term vested in the mortgagee whose security ranks immediately before that of the second or subsequent mortgage if the length of the last-mentioned term permits, and

(*i*) Law of Property Act, 1925, s. 85 (1).
(*k*) *Ibid.* s. 85 (2).
(*l*) *Ibid.* s. 86 (1).

in any case for a term less by one day at least than the term expressed to be assigned (*m*).

These provisions apply if the mortgage is effected by an absolute conveyance or assignment with a deed of defeasance or is expressed to be by way of trust for sale or otherwise (*n*). Any power to mortgage or to lend on mortgage is to be construed as a power to mortgage or lend on mortgage in the manner provided for by the Law of Property Act, 1925 (*o*).

A new method of effecting a mortgage is provided which is termed "a charge by deed expressed to be by way of legal mortgage" (*p*). This is recognised as a legal estate (*q*). A form is provided in the Fifth Schedule of the Law of Property Act, 1925 (*r*). The essence of the form appears to be in the words "charges by way of legal mortgage."

The charge does not seem to actually create any term of years, but the mortgagee has the same protection, powers and remedies (including the right to take proceedings to obtain possession from the occupiers and the persons in receipt of rents and profits or any of them) as if (1) in the case of a mortgage of an estate in fee simple a mortgage term for 3,000 years had been thereby created in favour of the mortgagee, and (2) in the case of a mortgage of a term of years, a sub-term less by one day than the term vested in the mortgagor had been created in favour of the mortgagee (*s*).

Where an estate vested in a mortgagee immediately before the commencement of 1926 has been converted by the Law of Property Act, 1925, into a term of years absolute or a sub-term, the mortgagee may by a declaration in writing convert the mortgage into a charge by way of legal mort-

(*m*) *Ibid.* s. 86 (2).
(*n*) *Ibid.* ss. 85 (2) (3) and 86 (2) (3).
(*o*) Sects. 85 (4) and 86 (4).
(*p*) Law of Property Act, 1925, s. 87.
(*q*) *Ibid.* s. 1 (2) (c).
(*r*) Form 1.
(*s*) Law of Property Act, 1925, s. 87 (1).

gage, and in that case the mortgage term will be extinguished and the mortgagee will have the same protection, powers and remedies as if the mortgage term or sub-term had remained subsisting (*t*).

Where an estate in fee simple has been mortgaged by the creation of a term of years absolute limited thereout or by a charge by way of legal mortgage, and the mortgagee sells under his statutory or express power of sale, the conveyance by him will operate to vest in the purchaser the fee simple in the land conveyed, subject to any legal mortgage having priority to the mortgage in right of which the sale is made. And the mortgage term or the charge by way of legal mortgage and any subsequent mortgage term or charge will merge or be extinguished as respects the land conveyed (*u*). The conveyance may, as respects the fee simple, be made in the name of the estate owner in whom the fee simple is vested (*u*).

Where a term of years has been mortgaged by the creation of another term of years limited thereout or by a charge by way of legal mortgage and the mortgagee sells under his statutory or express power of sale, the assignment will operate to convey to the purchaser not only the mortgage term, but also (unless expressly excepted with the leave of the Court) the leasehold reversion affected by the mortgage, subject to any legal mortgage having priority to the mortgage in right of which the sale is made, and the mortgage term or charge by way of legal mortgage and any subsequent mortgage term or charge will merge in such leasehold reversion or be extinguished unless excepted as aforesaid, and the assignment may, as regards the leasehold reversion, be made in the name of the estate owner in whom it is vested (*x*). Where a license to assign is required on a sale by a mortgagee, such license may not be unreasonably refused (*x*).

(*t*) Law of Property Act, 1925, s. 87 (2).
(*u*) *Ibid.* s. 88 (1).
(*x*) *Ibid.* s. 89 (1).

An order for foreclosure absolute vests in the mortgagee the fee simple or the leasehold reversion (in the latter case without giving rise to a forfeiture for want of a license to assign), subject to any legal mortgage having priority to the mortgage in right of which the foreclosure is obtained, and the mortgage term (if any) is thereby merged in the fee simple or leasehold reversion, and any subsequent mortgage term or charge by way of legal mortgage bound by the order is thereupon extinguished (subject in the case of mortgaged leaseholds to any express provision to the contrary contained in the order) (*y*).

Where a mortgagee has acquired a title under the Limitation Acts, he or the persons deriving title under him in the case of a fee simple may enlarge the mortgage term into a fee simple under the statutory power for that purpose, and in the case of a leasehold mortgage may by deed declare that the leasehold reversion affected by the mortgage and any mortgage affected by the title so acquired shall vest in him free from any right of redemption which is barred, and the same will vest accordingly without giving rise to a forfeiture for want of a license to assign (*z*).

Where the mortgage comprises fixtures or chattels personal any right to foreclose or take possession extends to the absolute or other interest therein affected by the charge (*a*).

As a mortgagee who has a charge by way of legal mortgage has the same powers as if a mortgage term had been thereby created in favour of the mortgagee, it follows that he can sub-mortgage by creating a shorter term than that to which he is entitled, and as, if a mortgage term had been created in favour of the mortgagee, he could have charged the term by way of legal mortgage, it also follows that he can sub-mortgage by means of a charge by way of legal mortgage. If this is done, the sub-mortgagee will be

(*y*) Law of Property Act, 1925, ss. 88 (2) and 89 (2).
(*z*) *Ibid.* ss. 88 (3) and 89 (3).
(*a*) *Ibid.* ss. 88 (4) and 89 (4).

in the same position in the case where the original charge by way of legal mortgage was a freehold mortgage as if he had a term of 3,000 years less one day, and in the case where the original charge by way of legal mortgage was a leasehold mortgage as if he had a term two days shorter than the original term.

The previous provisions apply in the case of a sub-mortgage so as to enable the sub-mortgagee in the case of a fee simple mortgage to convey the fee simple or acquire it by foreclosure, enlargement or otherwise (*b*), and in the case of a leasehold mortgage to merge the principal mortgage term as well as the derivative sub-mortgage term and to convey the leasehold reversion or acquire it by foreclosure, enlargement or otherwise (*c*).

These provisions apply to mortgage terms whether created before 1926 or after 1925 or by the Law of Property Act, 1925, itself, but they do not enable a mortgagee to confer a better title to the fee simple than would have been acquired if the fee simple had been validly conveyed by the mortgage and all prior legal mortgages, if any had been created by demise or charge by way of legal mortgage (*d*), and with regard to leaseholds these provisions take effect without prejudice to any incumbrance or trust affecting the leasehold reversion which has priority over the mortgage and do not apply where the mortgage term does not include the whole of the leasehold land included in the leasehold reversion unless the rent (if any) and the lessee's covenants and conditions (if any) have been apportioned either expressly or by implication as respects the land affected (*e*).

If an order for sale is made by the Court in the case of an equitable mortgage, the Court may make a vesting order in favour of a purchaser or appoint a person to convey or vest in the mortgagee a legal term of years to enable him to carry out the sale (*f*).

(*b*) Law of Property Act, 1925, s. 88 (5).
(*c*) *Ibid.* s. 89 (5).
(*d*) *Ibid.* s. 88 (6).
(*e*) *Ibid.* s. 89 (6).
(*f*) *Ibid.* s. 90.

The law as to consolidation is not affected (*g*).

Considerable alterations are made in the law as to tacking.

A prior mortgagee has the right after 1925 to make further advances to rank in priority to subsequent mortgages:—

(1) If an arrangement has been made to that effect with subsequent mortgagees.

(2) Where the mortgage imposes an obligation on the mortgagee to make such further advances.

(3) If the mortgagee had no notice of such subsequent mortgage at the time when the further advance was made (*h*).

It must be remembered that in ordinary cases registration in Middlesex or Yorkshire of a memorial of an instrument transferring or creating a legal estate or charge by way of legal mortgage is deemed to constitute actual notice to all persons and for all purposes (*i*).

Similarly, registration of a puisne mortgage (a legal mortgage not protected by a deposit of documents) at the Land Registry under the Land Charges Act, 1925, constitutes actual notice to all persons and for all purposes (*k*). But where the prior mortgage was made expressly for securing a current account or other further advances, the prior mortgagee is not deemed to have notice of a mortgage merely by reason of registration in Middlesex, Yorkshire, or at the Land Registry if the mortgage was not registered at the date of the original advance or when the last search (if any) by or on behalf of the prior mortgagee was made, whichever last happened (*l*).

In the case of a land charge for securing money created by a company, registration under sect. 93 of the Companies (Consolidation) Act, 1908, has effect as if the charge had been registered under the Land Charges Act, 1925 (*m*).

(*g*) *Ibid.* s. 93.
(*h*) *Ibid.* s. 94 (1).
(*i*) *Ibid.* s. 197.
(*k*) *Ibid.* s. 198.
(*l*) *Ibid.* s. 94 (2).
(*m*) Land Charges Act, 1925, s. 10 (5).

Consequently it usually constitutes actual notice, but will not do so in the case of a mortgage for securing a current account or other further advances, unless it was registered at the date of the original advance or when the last search (if any) by or on behalf of the mortgagee was made, whichever last happened.

Except in regard to making of further advances as beforementioned, tacking is altogether abolished. This does not affect priority acquired by tacking before 1926 (*n*).

These provisions do not apply to charges registered under the Land Registration Act, 1925, but they apply to mortgages whenever made (*o*).

It is expressly provided that all puisne mortgages after 1925 shall rank according to their dates of registration as land charges pursuant to the Land Charges Act, 1925, but this provision does not apply to mortgages or charges of registered land or of land within the jurisdiction of the Middlesex and Yorkshire Registries (*p*).

The provision making puisne mortgages created after 1925 depend solely on their dates of registration is really superfluous, as it follows from the provision that such a land charge created or arising after 1925 is void against a purchaser unless registered (*q*).

Where there are two puisne mortgages, of which the first was originally an equitable mortgage and was made before 1926, and the second was made after 1925, the first puisne mortgagee, so long as the mortgage is unregistered, will not, as against a purchaser in good faith without notice thereof, obtain any benefit by reason of his equitable mortgage being converted into a legal mortgage, and against such a purchaser the first mortgage is deemed to remain equitable (*r*). The second puisne mortgagee, if he takes in good faith without notice of the first unregistered puisne mortgage, will consequently be a purchaser for value of a

(*n*) Law of Property Act, 1925, s. 94 (3).
(*o*) *Ibid.* s. 94 (4).
(*p*) *Ibid.* s. 97.
(*q*) Land Charges Act, 1925, s. 13 (2).
(*r*) Law of Property Act, 1925, 1st Schedule, Part VII. 6.

legal estate without notice of the first puisne mortgage, which is deemed to remain equitable as against him and will so gain priority over the first puisne mortgagee. It is consequently desirable that all puisne mortgages made before 1926 should be registered as soon as possible after 1925 to protect them from being postponed or overridden through a purchaser obtaining a legal estate without notice of them. After the lapse of one year after the first transfer after 1925 of a puisne mortgage made before 1926, the puisne mortgage will be altogether unenforceable as against a purchaser even with notice unless it is registered (*s*).

The length of the leases which a mortgagor or mortgagee in possession may make if a contrary intention is not expressed in the mortgage deed is considerably increased in the case of mortgages made after 1925. Agricultural or occupation leases may be made for fifty years and building leases for 999 years (*t*).

The powers of accepting surrenders of leases are re-enacted with slight additions (*u*).

No important alteration is made in the powers of a mortgagee to sell, insure, appoint a receiver, and cut timber (*x*).

In the case of a mortgage of an undivided share, the mortgagee, of course, loses his right to dispose of the legal estate in such share, as undivided shares are subjected to an overriding trust for sale (*y*), but he has in lieu thereof the power to sell the share of the proceeds of sale and to appoint a receiver of such proceeds and also the power to compel the trustees in whom the property is vested to account to him.

Where the power to sell or appoint a receiver is exercisable on an act of bankruptcy by the mortgagor or on his being adjudged a bankrupt, the power cannot, in the case of a mortgage made after 1925, be exercised merely on account of bankruptcy without the leave of the Court (*z*),

(*s*) Land Charges Act, 1925, s. 14 (2).
(*t*) Law of Property Act, 1925, s. 99.
(*u*) *Ibid.* s. 100.
(*x*) *Ibid.* s. 101.
(*y*) *Ibid.* 1st Schedule, Part IV.
(*z*) *Ibid.* s. 110.

but a purchaser is not concerned in the case of any mortgage made after 1925 to see that the leave of the Court has been obtained in any case where such leave is necessary (*a*).

Where a mortgagee appoints a receiver, the mortgagee's powers of leasing and accepting surrenders of leases at once arise and may be delegated to the receiver (*b*). The receiver must, after payment of interest, apply any balance in or towards discharge of any principal money due under the mortgage if so directed in writing by the mortgagee (*c*).

In dealings effected after 1925 in good faith with a mortgagee or with a mortgagor if the mortgage has been discharged, released or postponed, a purchaser, mortgagee or lessee is not concerned with any trust at any time affecting the mortgage money or the income thereof, whether he has notice of the trust or not, and may assume, unless the contrary is expressly stated in the instruments relating to the mortgage—

(1) that the mortgagees (if more than one) are or were entitled to the mortgage money on a joint account;

(2) that the mortgagee has or had power to give valid receipts for the purchase or mortgage money and the income thereof and to release or postpone the priority of the mortgage debt or to deal with the same or the mortgaged property or any part thereof without investigating the equitable title to the mortgage debt or the appointment or discharge of trustees in reference thereto (*d*).

This applies whenever the mortgage was made (*e*). This gets over two difficulties. One was the case where before 1882 a mortgage or transfer to two or more mortgagees does not contain a joint account clause, and it was consequently theoretically necessary to obtain the concurrence of the per-

(*a*) Law of Property Act, 1925, s. 104.
(*b*) *Ibid.* ss. 99 (19) and 100 (13).
(*c*) *Ibid.* s. 109 (8) (v).
(*d*) *Ibid.* s. 113 (1).
(*e*) *Ibid.* s. 113 (3).

sonal representative of a deceased mortgagee or to show that the money was in fact held upon a joint account. The other was the case where the fact that mortgage money was trust money had been purposely or accidentally disclosed to a purchaser or mortgagee and it was consequently theoretically necessary to inquire into the trust.

Transfers of mortgage after 1925 can be considerably simplified, as after that year any deed executed by a mortgagee and not expressing a contrary intention which purports to transfer the mortgage or the benefit of the mortgage operates to transfer to the transferee—

(1) the right to recover and give receipts for the mortgage money and the interest then due and thenceforth to become due thereon;

(2) the benefit of all securities for the same and the right to sue on all covenants in the mortgage and the right to exercise all the powers of the mortgagee;

(3) all the estate and interest in the mortgaged property, subject to the right of redemption then subsisting (*f*).

Prior to 1926 a transfer of the benefit of a mortgage would not have passed the legal estate (*g*).

A receipt endorsed on, written at the foot of or annexed to a mortgage which states the name of the person who pays the money, and is executed by the chargee by way of legal mortgage or the person in whom the mortgaged property is vested and who is legally entitled to give a receipt for the mortgage, operates after 1925 as a reconveyance (*h*). It implies the same covenants as if the person who executes the receipt had by deed been expressed to convey the property as mortgagee subject to any interest paramount to the mortgage (*i*). If the person who pays the mortgage money is not entitled to the immediate equity of redemption, the receipt will operate as a transfer and not as a re-

(*f*) *Ibid.* s. 114.
(*g*) *Re Beachey, Heaton* v. *Beachey,* (1904) 1 Ch. 67.
(*h*) Law of Property Act, 1925, s. 115 (1).
(*i*) *Ibid.* s. 115 (6).

conveyance unless it is otherwise expressly provided or unless it is paid off out of capital or other money in the hands of a personal representative or trustee properly applicable for the discharge of the mortgage and it is not expressly provided that the receipt shall operate as a transfer (*k*).

These provisions do not confer on a mortgagor the right to keep alive a mortgage paid off by him so as to affect prejudicially any subsequent incumbrancer, and where there is no right to keep a mortgage alive the receipt will not operate as a transfer (*l*). Where the mortgage consists of a mortgage and further charge or more than one deed, it is sufficient if the receipt refers either to all the deeds or to the aggregate amount of money thereby secured and for the time being owing and is endorsed on or written at the foot of or annexed to one of the mortgage deeds (*m*). These provisions apply to receipts by and on behalf of building, friendly, industrial and provident societies, provided that the receipt is executed in the manner required by the statute relating to the society, but do not render the receipt liable to any stamp duty which would not otherwise be payable (*n*). They apply to the discharge of a charge by way of legal mortgage or to a mortgage by way of statutory mortgage and to all mortgages whenever executed (*o*), but not to charges and incumbrances registered under the Land Registration Act, 1925 (*p*). If the statutory receipt is taken, it is liable, apart from the provisions in favour of building, friendly, industrial and provident societies, to the same stamp duty as if it were a reconveyance under seal (*q*); and inasmuch as it will in every case imply statutory covenants for title, it is presumed that it must be considered as taking effect as a reconveyance, even though nothing in fact passes by the receipt.

Quite independently of these provisions, the term of years whereby a mortgage is secured becomes when the mortgage

(*k*) Law of Property Act, 1925, s. 115 (2).
(*l*) *Ibid.* s. 115 (3).
(*m*) *Ibid.* s. 115 (7).
(*n*) *Ibid.* s. 115 (9).
(*o*) *Ibid.* s. 115 (8).
(*p*) *Ibid.* s. 115 (10).
(*q*) *Ibid.* s. 115 (5).

is paid off by the owner of the equity of redemption a satisfied term (*r*).

It is also expressly provided that, without prejudice to the right of a tenant for life or other person having only a limited interest to require a mortgage to be kept alive by transfer or otherwise, the mortgage term shall, when the money secured by the mortgage has been discharged, become a satisfied term (*s*). In a simple case where no transfer is required, it seems, therefore, that after 1925 there will be nothing to reconvey, and where the statutory covenants are not required, a simple receipt with a twopenny stamp *not* written upon or annexed to the mortgage would be sufficient.

Forms of statutory mortgage and statutory transfers and discharge are provided (*t*) and their use sanctioned (*u*). The form adopted for the statutory mortgage is a charge by way of legal mortgage, which is called a legal charge by way of statutory mortgage.

As the ordinary charge by way of legal mortgage is not, so far as the necessary formal parts are concerned, in any case a long document, it seems improbable that statutory mortgages will be used more frequently in the future than in the past.

Requisitions.

1. *A statutory receipt signed by the mortgagees should be endorsed upon, written at the foot of or annexed to the mortgage prior to completion.*

2. *What is due to the mortgagee? If he is not paid off on completion and a statutory receipt obtained, it will be necessary for him to join in the conveyance to surrender the term of years vested in him.*

3. *The transfer of mortgage of was only stamped with a* 10*s. stamp. Was the stamp adjudi-*

(*r*) *Ibid.* s. 5.
(*s*) *Ibid.* s. 116.
(*t*) *Ibid.* 4th Schedule.
(*u*) *Ibid.* ss. 118, 119, 120 and 121.

cated? If not, was the transfer made on the occasion of the appointment of new trustees?

(After 1925 there is no objection to making this inquiry, as the purchaser is not concerned even if he has notice of the trust with the equitable title to the mortgage money.)

4. *The purchaser will require the last [ten] days of the term conveyed to him in the name of the estate owner in whom they are legally vested.*

5. *A puisne mortgage prior to the date of the further advance by the proposed transferor is registered at the Land Registry. The proposed transferee cannot take a transfer of the whole debt unless the puisne mortgagee joins therein to postpone his security.*

NOTICES.

The following provisions apply not only to notices required or authorised to be served by the Law of Property Act, 1925, but also to notices required to be served by any instrument affecting property executed or coming into operation after 1925 (*x*); but they do not apply to notices in Court proceedings (*y*).

1. The notice must be in writing.

2. Notices to be served on a lessee or mortgagor need only be addressed to him by that designation without his name, or, generally, to persons interested without any name, and notwithstanding any person affected by the notice may be absent, under disability, unborn, or unascertained.

3. Notices may be left at the last-known place of abode or business in the United Kingdom of the person to be served. In the case of a lessee or mortgagor, they may be affixed to a house or building comprised in the lease or mortgage.

(*x*) Law of Property Act, 1925, s. 196 (5). (*y*) *Ibid.* s. 196 (6).

4. Notices may be sent by registered letter to such last-known place addressed to the person to be served by name, provided the letter is not returned through the post office undelivered.

PERPETUITIES.

The rule of law prohibiting the limitation, after a life interest to an unborn person, of an interest in land to any child of an unborn person, or other issue of an unborn person, is abolished with respect to limitations or trusts created by an instrument coming into operation after 1925 (*z*). This rule, known as the rule in *Whitby* v. *Michell* (*a*), only applied to land. Where in a will, settlement or other instrument the absolute vesting either of capital or income of property or the ascertainment of a beneficiary or class of beneficiaries is made to depend on the attainment by the beneficiary or members of the class of an age exceeding twenty-one, and thereby the gift to that beneficiary or class or any member thereof, or any gift over, remainder, executory limitation or trust arising on the total or partial failure of the original gift is or, but for this provision, would be rendered void for remoteness, the will, settlement, or other instrument is to take effect for the purposes of such gift, gift over, remainder, executory limitation or trust as if the absolute vesting or ascertainment had been made to depend on the beneficiary or member of the class attaining twenty-one years, and that age is to be substituted for the age stated in the will, settlement, or other instrument (*b*). This applies to any instrument executed after 1925, or any testamentary appointment, devise or bequest contained in the will of a person dying after 1925, whatever be the date of the will (*c*). The section applies without prejudice to any provision

(*z*) *Ibid.* s. 161.
(*a*) 44 Ch. D. 85; 59 L. J. Ch. 485; 62 L. T. 771; 38 W. R. 337. See also *Re Nash,* (1910) 1 Ch. 1; 79 L. J. Ch. 1; 101 L. T. 837.
(*b*) Law of Property Act, 1925, s. 163 (1).
(*c*) *Ibid.* s. 163 (2).

whereby the absolute vesting or ascertainment is also made to depend on the marriage of any person, or any other event which may occur before the age stated in the will, settlement or other instrument is attained (*d*).

If land, prior to 1926, were devised to A., a bachelor, for life and after his death to his first son who attained the age of twenty-two, this devise would be valid as a legal contingent remainder if A. were living when his first son attained twenty-two; otherwise it would fail.

At the commencement of 1926 this legal contingent remainder would be converted into an equitable interest, but it would not fail in consequence of such conversion (*e*). A similar limitation in an instrument coming into operation after 1925 could not take effect as a legal contingent remainder. As an equitable interest it would have been altogether void, as it would then have infringed the rule against perpetuities. The effect of the Law of Property Act, 1925, s. 163, is to substitute the age of twenty-one for the age of twenty-two, making the gift valid as an equitable interest and not liable to fail even if A. dies before his first son attains twenty-one. But the principal object of the last-mentioned section is to validate gifts to classes which are frequently void in consequence of it being possible that some member of the class might not be a life in being at the time when the instrument comes into operation.

If a widow, aged sixty, having three children, aged twenty-four, twenty and eighteen, by deed settled property on such of her children as should attain twenty-five, the gift would infringe the rule against perpetuities, owing to the theoretical possibility that she might have other children, if it were not saved by the section.

The gift would, of course, be valid in a will, as all the possible children are lives in being at the death of the widow.

The rule against perpetuities does not apply—

(1) To a power to distrain or take possession of land given as indemnity against a rent.

(*d*) Law of Property Act, 1925, s. 163 (3).
(*e*) *Ibid.* 1st Schedule, Part I.

(2) To a rentcharge created only as an indemnity against another rentcharge.

(3) To a power to withhold payment of a rentcharge as an indemnity against another rentcharge.

(4) To grants and reservations of rights of entry, easements, rights and privileges for the purpose of—

(1) Winning mines and minerals;
(2) Felling and carrying away timber;
(3) Executing repairs to buildings;
(4) Constructing, repairing and maintaining sewers, watercourses, pipes, wires and other like works.

The Accumulation Acts, 1800 and 1892, are repealed and replaced by sects. 164 and 166 of the Law of Property Act, 1925. The slight amendments do not appear to be of sufficient importance, in connection with investigation of title, to deal with at length. Accumulations of surplus income during a minority under the general law or the statutory power are quite outside these provisions (*f*).

Requisition.

As the vendor has not attained the age of [twenty-five] years, the purchaser of the reversionary interest must be satisfied that the original appointment in favour of the class on attaining [twenty-five] would have been void for remoteness, and also, if that is the case, that the amendment effected by sect. 163 *of the Law of Property Act,* 1925, *renders the original appointment valid.*

(*f*) Law of Property Act, 1925, s. 165.

PERSONAL REPRESENATIVES.

The Court of Probate Act, 1857, ss. 70 to 80, and the Court of Probate Act, 1858, ss. 16, 18, 19, 21 and 22, are repealed by the Administration of Estates Act, 1925, and the provisions reproduced in an altered form, in particular, where a person appointed executor—

(1) survives the testator and dies without proving the will;

(2) is cited to prove and does not do so;

(3) renounces probate;

his rights wholly cease, as if he had not been appointed executor (*g*). If an executor, who has renounced, is permitted to withdraw the renunciation, the probate takes effect without prejudice to the acts of any other personal representative, and the subsequent probate is to be endorsed on the original probate or letters of administration. This applies no matter when the testator has died (*h*). An executor of an executor *ad infinitum* represents the original testator. The chain is only broken by—

(1) an intestacy;

(2) the failure of a testator to appoint an executor;

(3) the failure of an executor to prove (*i*).

Only a proving executor can transmit the chain of representation to his executor. Where two or more executors have proved the will, only the last survivor of them can transmit the chain, and if, after the chain has been transmitted, another executor of an earlier testator proves, the representation of that testator and all still earlier testators goes back to such proving executor (*k*).

"Real estate" after 1925 devolves upon the personal representatives in the same manner in all respects and with the like powers of dispositions and dealing as previously applied to chattels real (*l*). "Real estate" in the Act

(*g*) Administration of Estates Act, 1925, s. 5.
(*h*) *Ibid.* s. 6.
(*i*) *Ibid.* s. 7.
(*k*) *Ibid.* s. 7.
(*l*) *Ibid.* s. 2 (1).

(where not otherwise provided) includes chattels real, and in the first three sections of the Act includes—

(1) Chattels real and land in possession, remainder or reversion, and every interest in or over land to which a deceased person was entitled at the time of his death; and

(2) Real estate held on trust (including settled land) or by way of mortgage or security, but not money to arise under a trust for sale of land, nor money secured on land (*m*).

Land includes land of any tenure, mines and minerals, and all corporeal hereditaments; also a manor, an advowson, and a rent and all other incorporeal hereditaments, and an easement, right, privilege or benefit in, over or derived from land, but not an undivided share in land (*n*).

The excepted interests—money to arise from the sale of land, money secured on land, and an undivided share in land (which can only take the form, after 1925, of an interest in money to arise from the sale of land)—all pass to the personal representative as personalty.

Real estate over which a testator exercises a general power of appointment passes to his personal representatives; as also does an entailed interest which a testator disposes of by will (*o*).

The deceased interest in a joint tenancy (*p*), or as corporation sole (*q*), or in an entailed interest (*r*), and, of course, in property over which the testator had a power of appointment which he did not exercise and which does not belong to him or his personal representatives in default of appointment, does not pass to his personal representative.

If there are two or more personal representatives, in general all must concur in any conveyance or assignment of "real estate," unless the conveyance or assignment is by the order of the Court; but any conveyance or assignment of "real estate" may be made by the proving executor or

(*m*) *Ibid.* s. 3 (1).
(*n*) *Ibid.* s. 43 (iv).
(*o*) *Ibid.* s. 3 (2).
(*p*) *Ibid.* s. 3 (4).
(*q*) *Ibid.* s. 3 (5).
(*r*) *Ibid.* s. 3 (3).

executors for the time being without an order of the Court, and is as effectual as if all the executors had concurred therein (*s*).

In fact this applies to every kind of property and all powers vested in the personal representatives, as it is provided that, whether or not the testator died before the 1st of January, 1926, where probate is granted to one or some of the persons named as executors, whether or not power is reserved to the others or other to prove, all the powers which are by law conferred upon the personal representative may be exercised by the proving executor or executors for the time being; and this applies whenever the testator died (*t*), so that, for instance, no question can arise in the future whether or not an executor, who had not proved, ought to have concurred in an appointment of new trustees.

Where a person dies intestate, until administration his real and personal estate are to vest in the President of the Probate, Divorce and Admiralty Division of the High Court of Justice (*u*). Administration is to be granted having regard to the rights of all persons interested in real and personal estate. As regards land settled otherwise than by the will of a testator, administration (limited in any way the Court thinks fit) may be granted to the trustees of the settlement (*x*).

Representation is not, after 1925, to be granted to more than four persons, but if a beneficiary is an infant, or a life interest arises under a will or an intestacy, representation is to be granted either to a trust corporation (with or without an individual) or to not less than two individuals (*y*). If only one personal representative is appointed, then during the minority or subsistence of the life interest, and until the estate is fully administered, the Court may, on the application of any person interested, or his guardian, committee or receiver, appoint one or more additional personal

(*s*) Administration of Estates Act, 1925, s. 2 (2).
(*t*) *Ibid.* s. 8.
(*u*) *Ibid.* ss. 9, 55 (1) (xv).
(*x*) Supreme Court of Judicature Act, 1925, s. 162.
(*y*) *Ibid.* s. 160 (1).

representatives (*z*). This applies to grants made after 1925, no matter when the testator died (*a*).

Representation may be granted in respect of real estate or any part thereof either separately or together with personal estate or in respect of trust estate only, but representation to a deceased's own real and personal estate is not to be severed when the estate is insolvent (*b*).

Representation after 1925 is to be granted direct to a trust corporation and not to a syndic or nominee on behalf of a trust corporation, and where any property prior to the commencement of 1926 was vested in a syndic on behalf of a trust corporation it then vested in the trust corporation, but this does not apply to registered or inscribed securities or to land or a charge registered under the Land Registration Act, 1925, but such securities, land or charge must be transferred to the corporation or as the corporation shall direct (*c*).

A testator may appoint, and in default of appointment is to be deemed to have appointed, as his special executors in regard to settled land, settled otherwise than by his will, the persons, if any, who are trustees of the settlement thereof, and probate may be granted to such trustees limited to the settled land (*d*).

A personal representative (other than a trustee of the settlement) may before representation is granted to him renounce his office in regard to the settled land without renouncing it in regard to other property, or after representation has been granted apply to the Court for revocation of the grant in regard to the settled land without applying in regard to other property (*e*). In any case the trustees of the settlement or any person beneficially interested under the settlement may make a similar application to the Court,

(*z*) *Ibid.* s. 160 (2).
(*a*) *Ibid.* s. 160 (3).
(*b*) *Ibid.* s. 155.
(*c*) *Ibid.* s. 161.
(*d*) Administration of Estates Act, 1925, s. 22.
(*e*) *Ibid.* s. 23 (1).

but the order will not prejudice previous acts and dealings, if any, of the personal representative or the effect of notices given to him (*f*). The special personal representatives may dispose of the settled land without the concurrence of the general personal representatives, and the general personal representatives may likewise dispose of the other property without the concurrence of the special personal representatives (*g*).

All the property to which a deceased person was beneficially entitled and all the property of which he has disposed in pursuance of a general power (including the statutory power to dispose of entailed interests) are assets for the payment of his debts and liabilities (*h*). If a person to whom any such beneficial interest devolves or is given or in whom such interest vests disposes thereof in good faith before action brought or process sued out against him, he is personally liable for the value of the interest disposed of by him, but that interest is not liable to be taken in execution or under the process (*i*).

On the death of a person intestate as to any real or personal estate, subject to the provisions contained in his will (if any), his personal representatives hold the property upon trust to sell, call in and convert into money such part of the estate as does not consist of money with power to postpone the sale and conversion so long as they think proper, but so that personal chattels shall not be sold except for special reason (*k*). Out of the money so arising and the ready money of the deceased they are to pay his funeral, testamentary and administration expenses and debts and other liabilities properly payable thereout and set aside a fund sufficient to pay for any pecuniary legacies bequeathed by the will (if any) (*l*). The personal representatives may act as trustees during a minority (*m*), and the income of so much of the estate as is not disposed of by the will and is not required for administration purposes may, as from

(*f*) Administration of Estates Act, 1925, s. 23 (2).
(*g*) *Ibid.* s. 24.
(*h*) *Ibid.* s. 32 (1).
(*i*) *Ibid.* s. 32.
(*k*) *Ibid.* s. 33 (1).
(*l*) *Ibid.* s. 33 (2).
(*m*) *Ibid.* s. 33 (3).

the death of the deceased, be treated and applied as income however such estate is invested, and any necessary apportionment made between the tenant for life and remainderman (*n*).

The right of retainer and the right to prefer creditors may be exercised in respect of all assets of the deceased, but the right of retainer is only to apply to debts owing to the personal representative in his own right or jointly with another person (*o*). If the estate is insolvent, subject to the priority of the funeral, testamentary and administration expenses, the same rules apply as may be in force for the time being under the law of bankruptcy (*p*). Where the estate is solvent the order of application is as follows:—

(1) Property not disposed of by will subject to a retention thereout of a fund sufficient to meet pecuniary legacies.

(2) Property not specifically devised or bequeathed, but included (either by a specific or general description) in a residuary gift subject to the retention thereout of a fund sufficient to meet pecuniary legacies.

(3) Property specifically appropriated or devised or bequeathed (either by a specific or general description) for the payment of debts.

(4) Property of the deceased charged with or devised or bequeathed (either by a specific or general description) subject to a charge for the payment of debts.

(5) The fund (if any) retained to meet pecuniary legacies.

(6) Property specifically devised or bequeathed rateably according to value.

(7) Property appointed by will under a general power, including the statutory power to dispose of entailed interests rateably according to value.

(*n*) *Ibid.* s. 33 (3). (*o*) *Ibid.* s. 34 (2).
(*p*) *Ibid.* 1st Schedule, Part I.

The order of application may be varied by will, and the liability of land to answer death duty imposed thereon in exoneration of other assets is not affected (*q*).

The beneficial interests taken in the property not disposed of by will are dealt with under the heading "Wills."

A personal representative (including, of course, an administrator) may assent to the vesting in any person who, whether by devise, bequest, devolution, appropriation or otherwise may be entitled thereto either beneficially or as a trustee or personal representative of any estate or interest in real estate or chattels real to which the testator was entitled or over which he exercised a general power of appointment, including the statutory power to dispose of entailed interests and which devolved upon the personal representative (*r*).

The assent operates to vest in that person the estate or interest to which the assent relates, and, unless a contrary intention appears, relates back to the death of the deceased (*s*).

The statutory covenants implied by the words "as personal representative" may be implied in an assent though not under seal (*t*).

An assent must be in writing signed by the personal representative, and must name the person in whose favour it is given. It operates to vest the legal estate to which it relates. If not in writing it will not pass any legal estate (*u*).

An assent should not refer to the will for the purpose of describing the property or otherwise, so as to bring the will on the title. There is no objection to mentioning the will if the assent is expressed to be to trustees for sale upon trust to sell the same and hold the proceeds of sale upon the trusts declared by the will, as there the trusts of the proceeds of sale do not concern the purchaser; but if the will contains, for instance, a power to appoint new trustees,

(*q*) Administration of Estates Act, 1925, 1st Schedule, Part II.
(*r*) *Ibid.* s. 36 (1).
(*s*) *Ibid.* s. 36 (1).
(*t*) *Ibid.* s. 36 (3).
(*u*) *Ibid.* s. 36 (4).

the power should be repeated in the assent and should be referred to as "a power to appoint new trustees of this assent."

Forms of assent are given in the Law of Property Act, 1925, Fifth Schedule, Forms 8 and 9, and in the Settled Land Act, 1925, First Schedule, Form 5, in the case of a vesting assent.

Any person in whose favour an assent or conveyance of a legal estate is made by a personal representative may require notice thereof written or endorsed on or permanently annexed to the probate or letters of administration (*x*). A statement in writing by a personal representative that he has not made an assent or conveyance of a legal estate in favour of a purchaser, but without prejudice to any previous disposition made in favour of a purchaser deriving title mediately or immediately under the personal representative, is sufficient evidence that an assent or conveyance has not been given or made in respect of the legal estate to which the statement relates, unless notice of a previous assent or conveyance affecting that estate has been placed on or annexed to the probate or letters of administration (*y*).

A conveyance by a personal representative of a legal estate to a purchaser accepted on the faith of such a statement (without prejudice as aforesaid and unless notice of a previous assent or conveyance affecting that estate has been placed on or annexed to the probate or administration) will operate to transfer or create the legal estate expressed to be conveyed in like manner as if no previous assent or conveyance had been made. A personal representative is liable for a false statement in regard to any such matter as if it had been contained in a statutory declaration (*z*).

An assent or conveyance by a personal representative in respect of a legal estate is in favour of a purchaser (unless notice of a previous assent or conveyance has been placed

(*x*) *Ibid.* s. 36 (5).
(*y*) *Ibid.* s. 36 (6).
(*z*) *Ibid.* s. 36 (6).

on the probate or administration) to be taken as sufficient evidence that the person in whose favour the assent or conveyance is made is the person entitled to have the legal estate conveyed to him upon the proper trusts, if any, but will not otherwise prejudicially affect claims of any person rightfully entitled (*a*).

The purchaser need not accordingly go behind the assent and need not read the will. The purchaser will not be prejudiced by having notice that all the debts, liabilities, funeral and testamentary or administration expenses, duties and legacies have been discharged or provided for (*b*). All these provisions apply to assents and conveyances made after 1925 no matter when the testator or intestate died (*c*).

The assent requires no stamp (*d*).

An assent or conveyance, except in favour of a purchaser of a legal estate, will not prejudice the right to recover the estate or interest in order to pay any duties, debts or other liabilities, or to indemnify the personal representative (*e*). An assent may be given subject to any legal estate or charge by way of legal mortgage, or the personal representative may require security as a condition for giving an assent for the discharge of any duties, debt or other liability (*f*).

The validity of a conveyance to a purchaser is not affected by revocation of representation, but this is without prejudice to any order of the Court made before 1926 (*g*).

Personal representatives are given powers of appropriation (*h*) and a power to appoint a trust corporation or two or more individuals not exceeding four (whether or not including the personal representatives or one or more of them) to manage infants' property whereof no trustees are appointed by the will (*i*). They may also, for the purpose of giving effect to beneficial interests, limit or demise land for a term of years to trustees upon the usual trusts for raising or securing any principal sum and the interest

(*a*) Administration of Estates Act, 1925, s. 36 (7).
(*b*) *Ibid.* s. 36 (9).
(*c*) *Ibid.* s. 36 (12).
(*d*) *Ibid.* s. 36 (11).
(*e*) *Ibid.* s. 36 (9).
(*f*) *Ibid.* s. 36 (10).
(*g*) *Ibid.* s. 37.
(*h*) *Ibid.* s. 41.
(*i*) *Ibid.* s. 42.

thereon for which the land or any part thereof is liable, and may limit a rentcharge for giving effect to any annual or periodical sum for which land or the income thereof or any part thereof is liable (*k*). Personal representatives have also the same powers and discretions, including power to raise money by mortgage or charge, as a personal representative had before 1926 with respect to personal estate vested in him, and the power of raising money on mortgage may be exercised in the case of land by way of legal mortgage (*l*). They have also all the powers given to trustees for sale (*m*) and power to carry out, vary or rescind any contract entered into by a predecessor (*n*).

The result of the foregoing provisions and other provisions of the legislation of 1925 is:—

(1) If the vendor is acting as personal representative of a deceased person who was beneficially entitled, a purchaser is quite safe in dealing with him, provided that the probate has been inspected and no notice of assent is endorsed or written thereon or annexed thereto; but a recital or statement should be included in the conveyance to the effect that the personal representative has not given or made any previous assent or conveyance, and notice of the conveyance to the purchaser should be endorsed, written on or annexed to the probate.

(2) If the vendors are acting as personal representatives of a trustee for sale, a title can be safely taken from them, but in this case, as the purchaser has notice that they are merely trustees, it would not be safe to take a conveyance from a single personal representative, for although, under the Trustee Act, s. 18, the personal representatives or representative of a sole trustee or of the last survivor of two or more trustees is capable of exercising or performing any power or trust capable of being exercised by the trustees or trustee for the time being of the trust, the section

(*k*) *Ibid.* s. 43.
(*l*) *Ibid.* s. 39 (1).
(*m*) *Ibid.* s. 39 (2).
(*n*) *Ibid.* s. 39 (3).

takes effect subject to the restriction imposed in regard to receipts by a sole trustee.

(3) If the vendors are the personal representatives of a tenant for life in whose favour a vesting instrument was executed, the personal representatives of the tenant for life will usually be the trustees of the settlement. If the personal representatives are not the persons who appear by the last vesting deed to be the trustees of the settlement, the personal representatives still have power to create such legal estates to take effect in priority to the settlement as may be required for giving effect to any obligations imposed on them by statute; but where any capital money is raised or received, it must be paid to or by the direction of the trustees of the settlement or in accordance with an order of the Court (*o*). But even if the personal representatives take the purchase-money, it seems that a purchaser will be protected by the provision that the purchaser may act on the assumption that if the capital money is paid to the personal representative, that such representative is acting under his statutory and other powers and requires the money for purposes of administration (*p*); but as the case where the personal representatives are not the trustees of the settlement will happen rarely, it would be as well to make sure by inquiry in this case that no mistake has been made.

If a conveyance of or an assent relating to land formerly subject to a vesting instrument does not state who are the trustees of the settlement for the purposes of the Settled Land Act, 1925, a purchaser of a legal estate is bound and entitled to act on the assumption that the person in whom the land was thereby vested was entitled to the land free from all limitations, powers and charges taking effect under the settlement, or, if so expressed in the assent, as personal representative or trustee for sale or otherwise, and that every statement of fact in such conveyance or assent is correct (*q*).

(*o*) Settled Land Act, 1925, s. 18 (3).
(*p*) *Ibid.* s. 110 (3).
(*q*) *Ibid.* s. 110 (5).

Requisitions.

1. *Did the vendor give any assent to the devise of the property by parol or otherwise before* 1926, *or in writing after* 1925? *The probate must be produced to show that no assent is endorsed thereon or annexed thereto.*

2. *Owing to the annuity charged on the property, the land was, at the date of the death of the testator, settled land. Were any trustees of the settlement ever appointed, or a vesting deed executed? If not, trustees of the settlement must be appointed by the Court, so that the property may be cleared from the annuity. If trustees of the settlement were appointed, the appointment must be abstracted, together with any vesting deed that has been executed.*

3. *The purchaser cannot assume there was a parol assent to the devise to the vendor prior to the year* 1926. *An assent in writing must, accordingly, be obtained from the personal representatives, and notice thereof written on or permanently annexed to the probate.*

POWERS OF APPOINTMENT.

An instrument purporting to exercise a power of appointment over property which, in default of and subject to any appointment, is held in trust for a class or number of persons, of whom the appointee is one, is not to be void on the ground of fraud on the power as against "a purchaser in good faith"; but if the interest appointed exceeds the amount or value of the property (having regard to advances and any hotchpot provision) to which the appointee would be entitled in default of appointment, this protection is void as to the excess (*r*).

"A purchaser in good faith" means a person dealing with an appointee, not less than twenty-five years old, for

(*r*) Law of Property Act, 1925, s. 157 (1).

money or money's worth, and without notice of the fraud or of any circumstances from which, if reasonable inquiries had been made, the fraud might have been discovered (*s*).

All inquiries should still be made which would have been made before 1926.

These provisions apply only to dealings after 1925 (*t*). Apart from them, as the powers referred to would be only equitable, a purchaser or mortgagee would not be able to get a better title to the appointed fund than the appointee in fact had.

The Law of Property Act, 1925, contains other provisions relating to powers (*u*), but they are merely re-enactments of existing law.

Requisitions.

1. *The purchaser requires a statement from the trustees as to the interest to which the vendor was presumptively entitled immediately before the execution of the appointment in his favour, having regard to any advances previously made in his favour and the hotch-pot provision in the settlement. The statement must give full details of all the advances made to the vendor and the dates thereof, the value of the whole property subject to appointment, and the names of all other persons who were members of the class entitled in default of appointment at the date of the appointment in the vendor's favour. The purchaser must also be satisfied that the vendor was of the age of twenty-five years.*

2. *For what purpose does the proposed mortgagor require the money intended to be borrowed? Is the whole or any part thereof intended to be ultimately paid to the appointor?*

(*s*) Law of Property Act, 1925, s. 157 (2).
(*t*) *Ibid.* s. 157 (4).
(*u*) *Ibid.* ss. 155, 156, 158, 159.

POWERS OF ATTORNEY.

Although it is enacted that the donee of a power of attorney may execute or do any assurance, instrument or thing in and with his own name and signature and under his own seal by the authority of the donor of the power (*x*), the provision operates without prejudice to the following statutory declarations (*y*).

Where any power for disposing of or creating a legal estate is exercisable by a person who is not the estate owner, the power shall, when practicable, be exercised in the name and on behalf of the estate owner (*z*), and all leases or tenancies at a rent for a term of years authorised to be granted by a mortgagor or mortgagee, or by the Settled Land Act, 1925, or any other statute (whether or not extended by any instrument), may be granted in the name and on behalf of the estate owner by the person empowered to grant the same, whether he is an estate owner or not, with the same effect and priority as formerly, but this does not authorise any person granting a lease in the name of an estate owner to impose any personal liability on him except as respects the usual qualified covenant for quiet enjoyment (*a*).

Any person making any payment or doing any act in good faith in pursuance of a power of attorney will not be liable by reason that before the payment or act the donor of the power had died or become subject to disability or bankrupt, or had revoked the power, if the fact of such death, disability, bankruptcy or revocation was not known to the person making or doing the same (*b*). Where a statutory declaration by an attorney is to the effect that he had not received any notice or information of the revocation of such power of attorney by death or otherwise, the declaration, if made immediately before or within three months after any such payment or act as aforesaid, is to be taken as

(*x*) *Ibid.* s. 123 (1).
(*y*) *Ibid.* s. 123 (2).
(*a*) *Ibid.* s. 8 (1).
(*z*) *Ibid.* s. 7 (4).
(*b*) *Ibid.* s. 124 (1).

conclusive proof of such non-revocation at the time when such payment or act was made; and where the attorney is a corporation, an officer appointed by the corporation may make the declaration; and where probate or administration has been granted to any person as attorney for another, the provision applies as if the payment had been made or the act done had been made or done under a power of attorney (*c*). The section applies to payments or acts before 1926 as well as after 1925, and to a power of attorney implied by statute (*d*), for instance, the power of a mortgagee to convey in the name of the mortgagor (*e*).

Where a power of attorney confers power to dispose of or deal with any interest in or charge upon land, the instrument or certified copy thereof is to be filed at the central office, unless the instrument only relates to one transaction and is to be handed over on completion of that transaction, or unless it relates only to registered land, when it is to be filed at the Land Registry (*f*).

Notwithstanding any stipulation to the contrary, a purchaser of any interest or charge in land (other than registered land) is entitled to have any instrument creating a power of attorney which affects his title, or an office copy thereof, or the material portions thereof, delivered to him free of expense (*g*); and the vendor cannot rescind because the purchaser insists (*h*).

A power of attorney given for valuable consideration may be made irrevocable (*i*), and any power of attorney may be made irrevocable for a time therein specified, not exceeding one year from the date of the instrument (*k*). Then, in favour of a purchaser, the power shall not be revoked, while irrevocable, either by the donor of the power without the concurrence of the donee, or by the death, disability or

(*c*) Law of Property Act, 1925, s. 124 (2).
(*d*) *Ibid.* s. 124 (4).
(*e*) *Ibid.* ss. 88 (1), 89 (1).
(*f*) Supreme Court of Judicature Act, 1925, s. 219; Law of Property Act, 1925, s. 125 (1).
(*g*) Law of Property Act, 1925, s. 125 (2).
(*h*) *Ibid.* s. 125 (3).
(*i*) *Ibid.* s. 126.
(*k*) *Ibid.* s. 127.

bankruptcy of the donor (*l*). A new provision, which is made retrospective from the commencement of 1883, enables a power of attorney given for valuable consideration to be given to a purchaser of property or any interest therein and the persons deriving title under him, and makes such persons the duly constituted attorneys for all the purposes of the power, but without prejudice to any right to appoint substitutes given by the power (*m*). The only qualification is that the provision does not authorise the persons deriving title under the attorney to execute any instrument relating to registered land unless the power is protected by a caution or other entry on the register (*n*).

Provisions purporting to enable persons deriving title under the original attorney to execute powers of attorney were often, previously to 1926, inserted in the mortgages and other documents, but they were always of very doubtful validity.

Powers of attorney can now be used for a variety of purposes; for instance, a mere deposit of title deeds accompanied by a power of attorney enabling the mortgagee to sell the property can be used instead of a legal mortgage, or a purchaser intending to resell and not wishing to take up a conveyance might arrange with the vendor that the vendor should hand over the title deeds and give a power of attorney enabling the purchaser to convey to a sub-purchaser.

Corporations can give powers of attorney. The attorney, in that case, signs the name of the corporation and affixes his own seal (*o*). Corporations can also be appointed attorneys. In that case an officer appointed by the directors, council or governing body of the corporation can execute the deed or other instrument on behalf of the individual or corporation giving the power, and where an instrument appears to be executed by an officer so appointed in favour of a purchaser, it is to be deemed to be executed by an officer

(*l*) *Ibid.* ss. 126, 127.
(*m*) *Ibid.* s. 128 (1), (2).
(*n*) *Ibid.* s. 128 (3).
(*o*) *Ibid.* s. 74 (3).

duly authorised (*p*). A married woman can give a power of attorney (*q*), and as acknowledgments are abolished (*r*), no difficulty arises even in the case where she was married and acquired the property before 1883, but, of course, if the husband is entitled to the property in right of his wife, he or his attorney must also execute the deed.

A trustee or personal representative (*s*) intending to remain out of Great Britain and Northern Ireland (*t*) for more than a month may, by power of attorney, delegate the execution or exercise during his absence of all or any trusts, powers and discretions vested in him as such trustee, either alone or jointly with any other person or persons, but a person being the only other trustee or personal representative and not being a trust corporation cannot be so appointed attorney (*u*). The donor is liable for the acts or defaults of the attorney (*x*). The power is only in operation while the donor is abroad (*y*). It must be attested and filed, within ten days of execution, at the central office with a statutory declaration that the donor intends to remain abroad for more than a month (*z*). If the power refers to registered land, it must be registered at the Land Registry office (*a*).

In favour of any person dealing with the attorney, any act done or instrument executed under the power is valid and effectual unless such person had actual notice that the power had never come into operation, or of the revocation of the power before the act was done or instrument executed (*a*).

Tenants for life and statutory owners may also give powers of attorney in the same way as trustees or personal representatives (*b*).

Requisitions.

1. *Will the power of attorney abstracted be handed over on completion? If not, the power of attorney must be deposited at the Central Office in accordance*

(*p*) Law of Property Act, 1925, s. 74 (4).
(*q*) *Ibid.* s. 129.
(*r*) *Ibid.* s. 167.
(*s*) Trustee Act, 1925, s. 68 (17).
(*t*) *Ibid.* s. 68 (19).
(*u*) *Ibid.* s. 25 (1).
(*x*) *Ibid.* s. 25 (2).
(*y*) *Ibid.* s. 25 (3).
(*z*) *Ibid.* s. 25 (4).
(*a*) *Ibid.* s. 25 (8).
(*b*) *Ibid.* s. 25 (11).

with sect. 219 of the Supreme Court of Judicature (Consolidation) Act, 1925, and an office copy thereof delivered to the purchaser free of expense to him.

2. *The proposed mortgagee will require a power of attorney to convey the nominal leasehold reversion, as the statutory power to do so does not apply if the rent and the lessee's covenants and conditions have not been apportioned.*

REGISTRATION OF DEEDS AND WILLS.

(i) *Middlesex.*

Prior to 1926 documents whereby property in Middlesex was affected required registration in the Local Registry. Copyholds, leases at a rack rent, leases not exceeding twenty-one years, and lands in the City of London were outside the provisions, and registration under the Land Transfer Acts rendered registration in Middlesex unnecessary, and where there was merely an equitable mortgage created by deposit of title deeds, there was no instrument to register. Registration, however, was not of itself notice, so that a mortgagee who obtained the legal estate without notice of a prior registered equitable mortgage did not lose his priority, and, on the other hand, notice of a previous unregistered equitable mortgage would deprive a legal mortgagee who registered of his priority.

No deed of arrangement or land charge of Class A. made or created after the 30th July, 1900, requires registration in the Middlesex Registry, nor does any land charge, except a puisne mortgage, require registration in that registry if made after 1925 (*c*), and after that year no instrument which does not operate to transfer or create a legal estate or create a charge by way of legal mortgage need be registered (*d*).

(*c*) Land Charges Act, 1925, s. 18.
(*d*) Law of Property Act, 1925, s. 11.

A puisne mortgage is, of course, a mortgage creating a legal estate, and must, accordingly, be registered.

After 1925 the registration of a memorial of any instrument transferring or creating a legal estate or charge by way of legal mortgage constitutes actual notice thereof to all persons and for all purposes whatsoever, but the registration of a memorial of an instrument not required to be registered does not operate to give notice (*e*). But the fact that the registration does not give notice of an instrument not required to be registered does not, it is conceived, prevent a purchaser who has actually discovered such an instrument on the register from being affected by notice thereof, though in cases where the instrument ought to have been registered under the Land Charges Act, 1925, he will not be prejudicially affected by such notice (*f*).

Whenever property in Middlesex is purchased, which has not been registered under the Land Transfer Acts or the Land Registration Act, 1925, it is important that a search should be made in the Middlesex Registry, principally with a view to the discovery of puisne mortgages; but the fact that nothing may be found in the local registry in no way lessens the obligation to make the usual searches at the Land Registry.

(ii) *Yorkshire.*

Prior to 1926 all assurances of land in Yorkshire, except assurances of copyholds and leases not exceeding twenty-one years, were required to be registered under the Yorkshire Registries Act, 1884, and this applied even to an equitable mortgage created by deposit only.

The equitable rules with regard to notice which applied to lands in Middlesex have, since the 1st January, 1885, had no application in Yorkshire, and all assurances registered under the Act of 1884 have had priorities according to the date of registration. All priorities given by the Act had full effect except in the case of fraud, and no person claiming any legal or equitable interest by priority of registration lost

(*e*) Law of Property Act, 1925, s. 197. (*f*) *Ibid.* s. 199.

such priority in consequence of his having been affected by actual or constructive notice (*g*).

After 1925 a memorial of an instrument transferring or creating a legal estate or charge by way of legal mortgage must still be registered (*h*). General equitable charges, estate contracts, restrictive covenants and equitable easements, if created after 1925, may either be registered in the local registry or in the register of land charges at the Land Registry (*i*). But other assurances after 1925 no longer require registration (*k*).

After 1925 the registration of a memorial of any instrument transferring or creating a legal estate or charge by way of legal mortgage (*l*), or of a general equitable charge, estate contract, restrictive covenant or equitable easement (*m*), constitutes actual notice, but the registration of any other matter or document does not constitute notice (*l*).

On account of the stricter provisions of the Yorkshire Registries Acts, it has always been more important to search in these registries than in the Middlesex Registry, and this is still the case, owing to the fact that the number of documents and matters within the provisions of the Yorkshire Acts are more numerous than those within the Middlesex Acts. But search at the Land Registry cannot safely be neglected because nothing is found in the local registry.

(iii) *Bedford Level.*

It is conceived that the term "local registry," frequently used in the legislation of 1925, refers only to the Middlesex and Yorkshire Registries, and has no application whatever to the Bedford Level Registry, which is now practically closed.

(*g*) Yorkshire Registries Act, 1884, s. 14.
(*h*) Law of Property Act, 1925, s. 11.
(*i*) Land Charges Act, 1925, s. 10.
(*k*) Law of Property Act, 1925, s. 11.
(*l*) *Ibid.* s. 197.
(*m*) *Ibid.* s. 198; Land Charges Act, 1925, s. 10 (6).

Requisitions.

1. *A puisne mortgage is registered against the name of the vendor in the Middlesex Deeds Registry. It must be fully abstracted and a receipt endorsed thereon prior to completion, or the mortgagee must concur in the conveyance to the purchaser.*

2. *A full abstract of the charge registered against the name of the vendor in the Yorkshire Deeds Registry must be delivered, and the purchaser reserves the right to make any requisitions or objections which may be found to be necessary on perusing such abstract.*

3. *The usual searches will be made in the local registry. It is assumed that all registered deeds and documents have been abstracted; please confirm.*

4. *The purchaser reserves the right of making further requisitions or objections upon any deeds or documents registered in the local registry which may affect the property contracted to be sold.*

REGISTRATION OF TITLE.

The Land Registration Act, 1925, repeals the Land Transfer Act, 1875, the Land Registry Act, 1886, and the whole of the Land Transfer Act, 1897, except Part I. (*n*), and consequently contains the whole law relating to registration of title.

One of the principal defects of the previous law on this subject was that, after registration of title, the legal estate could be dealt with off the register, with the exception that it could not be so dealt with on a sale in a compulsory area (*o*), so that there might exist simultaneously three kinds of owners—the legal owner, the registered proprietor, and the beneficial owner—and to these even a fourth might be

(*n*) Land Registration Act, 1925, s. 147 (1).
(*o*) *Capital and Counties Bank* v. *Rhodes,* (1903) 1 Ch. 631.

added, a tenant for life who had parted with his beneficial interest and was still able to convey the legal estate under his statutory power.

After 1925 the registered proprietor, whether he was registered before 1926 or after 1925, has vested in him, without any conveyance where the registered land is freehold, the legal estate in fee simple in possession, and where the registered land is leasehold, the legal term created by the registered lease, but subject to the overriding interests, if any, including any mortgage term or charge by way of legal mortgage created by or under the Law of Property Act, 1925, or the Land Registration Act, 1925, or otherwise, which has priority over the registered estate (*p*). On satisfaction of any term and the cancellation of the entry, if any, protecting the same, it vests, without any conveyance, in the proprietor of the land as if the same had been conveyed or surrendered to him, as the case may be (*q*).

When any person is registered as first proprietor of land in a compulsory area after 1925, the provisions of the Law of Property Act, 1925, for getting in legal estates (which do not in general apply between vendor and purchaser (*r*)) are to apply to any legal estate in the land which was expressed to be conveyed or created in favour of a purchaser or lessee before 1926, but which failed to pass or be created by reason of the omission of such purchaser or lessee to be registered as proprietor of the land, and operates to vest the legal estate in the person so registered as proprietor on his registration, but subject to any mortgage term or charge by way of legal mortgage having priority thereto (*s*).

It should be noticed that the Land Registration Act, 1925, is deemed to come into operation on 1st January, 1926, immediately after the Law of Property Act, 1925, the Settled Land Act, 1925, the Land Charges Act, 1925, the Trustee Act, 1925, and the Administration of Estates Act,

(*p*) Land Registration Act, 1925, s. 69 (1).
(*q*) *Ibid.* s. 69 (2).
(*r*) Law of Property Act, 1925, 1st Schedule, Part II., para. 7 (j).
(*s*) Land Registration Act, 1925, s. 69 (3).

1925, so that the provisions of the Land Registration Act, 1925, prevail over the provisions of the other Acts. For instance, if land is settled and the tenant for life or statutory owner is not the registered proprietor, the legal estate which, under the Law of Property Act, 1925 (*t*), vests in the tenant for life or statutory owner will, immediately after, vest in the registered proprietor under the Land Registration Act, 1925 (*u*). In this particular case the tenant for life or statutory owner or personal representative who, if the land were not registered, would be entitled to have the settled land vested in him is entitled to be registered as proprietor, and may apply accordingly; and no fee is to be charged in respect of such registration or consequential alteration of the register (*x*).

When once the legal estate in registered land has been vested in the registered proprietor it is only capable of being dealt with by him in the manner provided by the Land Registration Act, 1925 (*y*). Special provision has been made for the case where the land is held in undivided shares. If the entirety is registered and the persons entitled to the several undivided shares are registered as proprietors, the registrar on the occasion of the first dealing after 1925 affecting the title is to rectify the register by entering as the proprietors the persons who, under the Law of Property Act, 1925, have become entitled to the legal estate (*z*).

If at the commencement of 1926 the entirety of the land is not registered, but the title to an undivided share is registered, the registrar may at any time after notice to the proprietor and to the other persons, if any, who appear in the register to be interested therein, remove from the register the title to the undivided share, and such removal has the like effect as if it had been effected with the assent of such other persons as aforesaid (*a*). But if before 1927 or

(*t*) 1st Schedule, Part II., para. 3.
(*u*) Sect. 69 (1).
(*x*) Land Registration Act, 1925, s. 92.
(*y*) *Ibid.* s. 69 (4).
(*z*) *Ibid.* s. 78 (1).
(*a*) *Ibid.* s. 78 (2).

such extended time as the registrar may allow and before such removal as aforesaid, the persons in whom the legal estate of the entirety of the land or any persons interested in more than an undivided half of the land or the income thereof make an application for the purpose and furnish proper evidence, the registrar, without charging any fee, is to register the persons in whom the legal estate is vested as proprietors subject to any incumbrance affecting the entirety, but free from any charge or incumbrance affecting an undivided share (whether formerly registered or not), and when the title to the entirety is so registered the title to the undivided share is to be closed (*b*).

If the person in whom the entirety of the land is vested is the Public Trustee, he is not to be registered as proprietor pursuant to these provisions unless and until he has been requested to act in accordance with the Law of Property Act, 1925, and has accepted the trust (*c*).

After 1925 no entry other than a caution against dealing with the entirety is to be made in the register as respects the title to an undivided share in land (*d*).

After 1925 estates capable of subsisting as legal estates are to be the only interests in land in respect of which a proprietor can be registered, and all other interests (except overriding interests and interests entered on the register before 1926) are to take effect in equity as "minor interests," but all interests (except undivided shares in land) entered on the register at the commencement of 1926 which are not legal estates are to be capable of being dealt with under the Land Registration Act, 1925 (*e*); but on the occasion of the first dealing with any such interest the register is to be rectified so as to secure that the entries therein shall be similar to those which would have been made if the title had been registered after 1925 (*f*).

(*b*) *Ibid.* s. 78 (2).
(*c*) *Ibid.* s. 78 (4).
(*d*) *Ibid.* s. 78 (5).
(*e*) Sect. 2 (1).
(*f*) Land Registration Act, 1925, s. 2 (1).

All registered land, unless the contrary is expressed in the register, is deemed to be subject to such of the following overriding interests as may be for the time being subsisting thereon:—

(1) Rights of common, drainage rights, customary rights (until extinguished), public rights, profits *à prendre*, rights of sheepwalk and legal easements.

(2) Liability to repair highways by reason of tenure, quit rents, Crown rents, heriots, and other rents and charges (until extinguished) having their origin in tenure.

(3) Liability to repair chancel of any church.

(4) Liability in respect of embankments and sea and river walls.

(5) Land tax, tithe rentcharge, tithe moduses and payments for redemption of tithe.

(6) Rights acquired or being acquired under the Limitation Acts.

(7) Rights of persons in occupation or receipt of rents and profits save where inquiry is made of such persons and the rights are not disclosed.

(8) Rights excepted from registration.

(9) Rights under local land charges unless and until registered or protected on the register.

(10) Rights of fishing and sporting, seignorial and manorial rights (until extinguished).

(11) Leases at a rent for not more than twenty-one years made without taking a fine.

(12) In respect of land registered before 1926, mines and minerals, and ancillary rights created before the date of first registration or before 1898 in the case of land first registered before that year (*g*).

Freedom from land tax or tithe may be noted on the register (*g*), as also may easements, rights, privileges (*h*) and other overriding interests proved or admitted to exist (*i*).

(*g*) Land Registration Act, 1925, s. 70 (1).
(*h*) *Ibid.* s. 70 (2).
(*i*) *Ibid.* s. 70 (3).

A purchaser for money or money's worth takes free from all death duties, even though notice of claim to such duties is noted on the register (*k*).

The registrar will, before registering or entering notice of any disposition which would operate to override the charge for duties, give notice to the Commissioners for Inland Revenue and cancel any notice of claim to duties (*l*). When all claims have been satisfied, or no such claims arise, or the Commissioners are satisfied that the duties will be paid, they are to notify the registrar, who will then cancel the notice (if any) of the claim (*m*), but it does not appear to be the duty of the registrar to wait for such notification before registering a transfer.

Dispositions other than in favour of a purchaser for money or money's worth take effect subject to the charge for duties, even though notice of claim is not entered in the register (*n*).

After 1925 only legal estates will be capable of registration. An estate owner holding an estate in fee simple (including a tenant for life, statutory owner, personal representative or trustee for sale), whether subject to incumbrances or not, or any other person (not being a mortgagee where there is a subsisting right of redemption or a person who has merely contracted to buy land) who is entitled to require a legal estate in fee simple, whether subject to incumbrances or not, to be vested in him, may apply to the registrar to be registered in respect of such estate, or in the case of a person not in a fiduciary position to have registered in his stead any nominee as a proprietor with an absolute title or a possessory title (*o*).

Where the registered land is a freehold estate, registration with an absolute title vests in the registered proprietor an estate in fee simple in possession subject only to—

(a) incumbrances and other entries, if any, appearing on the register;

(*k*) *Ibid.* s. 73 (1), (15), (16).
(*l*) *Ibid.* s. 73 (8).
(*m*) *Ibid.* s. 73 (9).
(*n*) *Ibid.* s. 73 (2).
(*o*) *Ibid.* s. 4.

(b) "overriding interests" unless the contrary is expressed;

(c) "minor interests" of which he has notice in the case where the first proprietor is not entitled for his own benefit,

but free from all other estates and interests whatever, including estates and interests of His Majesty (*p*).

Overriding interests in the case of land registered before 1926 include matters which were previously declared not to be incumbrances (*q*).

"Minor interests" mean the interests not capable of being disposed of or created by registered dispositions and capable of being overridden (whether or not a purchaser has notice thereof) by the proprietors, unless protected by notice, caution, inhibition or restriction, and all rights and interests not registered or protected on the register other than overriding interests. In the case of land held on trust for sale, interests and powers capable of being overridden by the trustees for sale, and, in the case of settled land, interests and powers capable of being overridden by the tenant for life are minor interests, even though protected on the register (*r*).

The registration of a person as first proprietor of land with a possessory title will not affect or prejudice the enforcement of any estate, right or interest adverse to or in derogation of the title of the first proprietor subsisting or capable of arising at the time of the first registration, but otherwise has the same effect as registration with an absolute title (*s*). Where an absolute title is required, a qualified title may be registered if on examination of the title a qualification appears necessary to the registrar (*t*).

The rules as to registration of leasehold land with an absolute, possessory or qualified title are similar to those which apply to freeholds (*u*), but leasehold land held under a lease containing an absolute prohibition against dealings

(*p*) Land Registration Act, 1925, s. 5. (*q*) *Ibid.* s. 3 (xvi).
(*r*) *Ibid.* s. 3 (xv). (*s*) *Ibid.* s. 6.
(*t*) *Ibid.* s. 7. (*u*) *Ibid.* ss. 8, 9, 11 and 12.

therewith *inter vivos* is not to be registered unless and until provision is made in the manner prescribed by general rules made in pursuance of the Act for preventing dealing therewith in contravention of the restriction (*x*).

A mortgagee by demise who is entitled in equity to the superior term out of which it was created when the equity of redemption is barred is to be registered as proprietor of the superior term, but not where the superior term comprises other property and an unapportioned rent having a money value or any covenant affecting the superior term has not been apportioned (*y*).

Leasehold land may be registered with a good leasehold title, the meaning of which speaks for itself (*z*).

A registered proprietor of freehold land may:—

(1) Transfer mines and minerals apart from the surface, or *vice versâ*.

(2) Grant annuities or rentcharges in perpetuity or for a term of years.

(3) Grant easements, rights and privileges.

(4) Transfer the fee simple subject to reservation of an annuity or rentcharge in perpetuity or for a term of years, or subject to a reservation of an easement, right or privilege (in perpetuity or for a term of years absolute).

(5) Grant leases (subject or not to the reservation of easements, rights and privileges) of the land or part thereof, or the mines and minerals, or the surface, or of an easement, right or privilege for any term of years (*a*).

A perpetual annuity or rentcharge may be granted or reserved with or without a power of re-entry on default of payment or breach of covenant (*b*).

In the case of a lease not exceeding twenty-one years taking effect in possession within one year at a rent without

(*x*) *Ibid.* s. 8 (2).
(*y*) *Ibid.* s. 8 (3).
(*a*) *Ibid.* s. 18 (1).
(*z*) *Ibid.* s. 10.
(*b*) *Ibid.* s. 18 (2).

fine taken, the disposition takes effect notwithstanding any caution, notice, restriction or inhibition (other than a bankruptcy inhibition) may be subsisting, but subject to the interests protected by such caution, notice, restriction or inhibition (*c*).

Transfers of land or part thereof do not take effect until registration (*d*), except that a lease not exceeding twenty-one years at a rent without fine taken is not authorised or required to be registered, nor is a mortgage term while there is a subsisting right of redemption. Easements, rights or privileges only require registration as appurtenant to registered land. Where the registered land is the servient tenement, entry of notice thereof is only to be made against the title to the servient land (*e*).

Similar principles with the necessary qualifications apply in the case of leasehold land (*f*).

On the transfer of leaseholds proper covenants are implied unless negatived on the part of the transferor and transferee (*g*).

Mortgages and charges of registered land may be made in various ways. The proprietor may by deed or otherwise mortgage the land or any part thereof in any manner that would have been permissible if the land had not been registered with the like effect, provided that the registered land comprised in the mortgage is described (whether by reference to the register or in any other manner) in such a way as to enable the registrar to identify the same without reference to any other document (*h*). The mortgage may be protected by a caution, but if the mortgage is by deed the caution should be in a specially prescribed form (*i*), as although the mortgage may be made by deed it will be capable of taking effect only in equity and of being overridden as a minor interest until it is protected on the

(*c*) Land Registration Act, 1925, s. 18 (3).
(*d*) *Ibid.* s. 19 (1).
(*e*) *Ibid.* s. 19 (2).
(*f*) *Ibid.* ss. 21, 22, 23.
(*g*) *Ibid.* s. 24.
(*h*) *Ibid.* s. 106 (1).
(*i*) *Ibid.* s. 106 (2).

register in the specially prescribed form (*k*). The entry of a caution in the specially prescribed form has the effect of creating a legal estate, and it is accordingly itself a dealing capable of being restrained by a caution (*l*).

Where a mortgage by deed has been protected only by an ordinary caution, the mortgagee is not capable of dealing with the land by registered disposition (*m*); but where such a mortgage has been protected by a caution in the specially prescribed form, the mortgagee, or the persons deriving title under him, may, subject to furnishing sufficient evidence of title and notwithstanding that any interest or charge affecting the land not registered or protected on the register which has priority to the mortgage is disclosed, require the mortgage to be registered as a charge with the same priority as the caution (*n*), and neither the registrar or any person interested under a registered disposition is to be affected with notice of any such interest or charge so disclosed (*n*). Where the mortgage is by deed and has been registered as a charge, the proprietor of the charge has all the powers conferred upon the proprietor of a registered charge (*m*). Any mortgage protected by a caution can be transferred, discharged, surrendered or otherwise dealt with by the same instruments and in the same manner as if the land had not been registered, provided that where the mortgage has been registered as a charge the devolutions, dealings and notification of cessation shall be registered in the same manner and with the same consequences as a registered charge, and where the mortgage has been specially protected only by a caution in a specially prescribed form, then the devolutions and dealings shall be protected in like manner and in no other way (*o*).

A simpler method of mortgaging registered land is by registered charge (*p*). The charge may be in any form, provided that the land is described by reference to the

(*k*) *Ibid.* s. 106 (4).
(*l*) *Ibid.* s. 106 (3).
(*m*) *Ibid.* s. 106 (6).
(*n*) *Ibid.* s. 106 (5).
(*o*) *Ibid.* s. 106 (7).
(*p*) *Ibid.* s. 25 (1).

register or in any other manner sufficient to enable the registrar to identify the same without reference to any other document, and provided that the charge does not refer to any other interest or charge affecting the land which would have priority over the charge and is not registered or protected on the register, and which is not an overriding interest (*q*).

A provision in a charge depriving the proprietor thereof of the power of transfer by registered disposition, or of requiring the cessation to be noted on the register, or which affects any registered land or charge other than that in respect of which the land is to be registered, is void (*r*).

The charge is to be completed by the registrar entering on the register the person in whose favour the charge is made as proprietor of the charge (*s*).

A registered charge, unless made or taking effect by demise or sub-demise and subject to any provisions to the contrary in the charge, takes effect as a charge by way of legal mortgage (*t*). The usual covenants to pay principal and interest, and, in the case of leasehold land, to pay rent and perform covenants, are, unless expressly negatived, implied in a registered charge (*u*).

Registered charges rank according to the order in which they are entered on the register, and not according to the order in which they are created (*x*). Where a registered charge is made for securing further advances, notice by registered post is to be given to the proprietor before any entry is made on the register which would prejudicially affect any further advance (*y*).

Provision is made for the alteration of charges (*z*) and for the transfer of charges (*a*) on the register.

All charges in the name of more than one proprietor are, notwithstanding the mortgage money may be held in un-

(*q*) Land Registration Act, 1925, s. 25 (2).
(*r*) *Ibid.* s. 25 (3).
(*s*) *Ibid.* s. 26.
(*t*) *Ibid.* s. 27.
(*u*) *Ibid.* s. 28.
(*x*) *Ibid.* s. 29.
(*y*) *Ibid.* s. 30.
(*z*) *Ibid.* s. 31.
(*a*) *Ibid.* s. 33.

divided shares, treated as if the money had been held on a joint account (*b*).

On the mortgagee becoming entitled under the Limitation Acts or in consequence of a foreclosure he is entitled to be registered as proprietor of the land (*c*), and on the discharge of any charge notification of cesser is entered on the register, and the term or sub-term implied in or granted by the charges merges and is extinguished (*d*).

On a sale by the Court or under a power of sale the transaction is treated in the same manner as a transfer for value by the proprietor of the land (*e*), and the transfer operates to transfer the registered estate, and the mortgage term or sub-term merges, and any process or act purporting to keep the term or sub-term alive after cessation of the charge is void (*f*).

Where a transaction relates exclusively to registered land or to a registered charge and is effected by a registered disposition, any deed or instrument other than the registered disposition (subject to any prescribed exceptions) which is executed by the proprietor for the purpose of giving effect to the transaction is void (*g*). The registered proprietor has powers of creating and discharging restrictive covenants (*h*).

On the death of a sole proprietor of any registered land or charge his personal representative is entitled to be registered in his place (*i*). Assents by personal representatives must be in the prescribed form (*k*).

On the bankruptcy of a registered proprietor and the production of the prescribed evidence that the land or charge is part of the property of the bankrupt divisible amongst his creditors, his trustee is entitled to be registered as proprietor in his place (*l*); and where a trustee disclaims a registered lease, and an order is made by the Court vesting the lease in any person, the order is to direct the necessary

(*b*) *Ibid.* s. 32.
(*c*) *Ibid.* s. 34 (1), (2), (3).
(*d*) *Ibid.* s. 35.
(*e*) *Ibid.* s. 34 (4).
(*f*) *Ibid.* s. 34 (5).
(*g*) *Ibid.* s. 39.
(*h*) *Ibid.* s. 40.
(*i*) *Ibid.* s. 41.
(*k*) *Ibid.* s. 41 (4).
(*l*) *Ibid.* s. 42 (1).

alteration of the register, and the registrar, on being served with the order, is to alter the register accordingly (*m*).

Notices may be registered in respect of—

(1) Leases affecting registered land (*n*).
(2) Restrictive covenants affecting registered land (*o*).
(3) Manorial incidents affecting registered land (*p*).

The provisions with regard to leases may be extended by rules so as to apply to—

(1) Grants or reservations of annuities or rentcharges, either perpetual or for a term of years.
(2) The severance of mines and minerals from the surface.
(3) Land charges (until registered as registered charges).
(4) The right to require that there shall be two trustees of land held on trust for sale, or of the settlement, in the case of settled land.
(5) The right of any widow to dower, or under the Intestates' Estates Act, 1890, or any right to free-bench, or other like right.
(6) Creditors' notices and any other right or claim which it may be deemed expedient to protect by notice (*q*).

But notices are not to be registered in respect of any estate, right or interest capable of being overridden by the proprietor under a trust for sale or the powers of the Settled Land Act, 1925, or any other statute, or of a settlement, and capable of being protected by a restriction in the prescribed manner (*r*).

A disposition by the proprietor takes effect subject to all estates, rights and claims protected by notice on the register at the date of registration or entry of notice of the disposition (*s*). Notices of a claim entered on the register operate by way of notice only (*t*).

(*m*) Land Registration Act, 1925, s. 42 (2).
(*n*) *Ibid.* s. 48.
(*o*) *Ibid.* s. 50.
(*p*) *Ibid.* s. 51.
(*q*) *Ibid.* s. 49 (1).
(*r*) *Ibid.* s. 49 (2).
(*s*) *Ibid.* s. 52 (1).
(*t*) *Ibid.* s. 52 (2).

Any person having or claiming such an interest in land not already registered as entitles him to object to any disposition thereof without his consent may lodge a *caution* with the registrar (*u*). The caution is to be supported by an affidavit or declaration in the prescribed manner (*x*), and thereafter registration will not be made of an estate affected by the caution until after notice has been served on the cautioner, and the cautioner has failed to appear and oppose registration (*y*).

Cautions may also be lodged by any person interested in any land or charge registered in the name of another person (*z*). A caution against dealing also entitles the cautioner to notice before any dealing with the registered land or charge is registered (*a*).

The Court or registrar, subject to an appeal to the Court, upon the application of any person interested, may inhibit for a time, or until the occurrence of an event, or until further order, the registration or entry of any dealing with any registered land or charge (*b*).

Restrictions on transferring or charging registered land or a registered charge may on the application of the proprietor or, in accordance with rules to be made, on the application of persons other than the proprietor, by entry in the register, be imposed on land or a charge.

Such restrictions may take the form that transactions are not to be effected—

(1) Unless notice is sent to a specified address.
(2) Unless certain consents are given.
(3) Unless some other matter or thing is done.

In the case of joint proprietors the restriction may be to the effect that when the number is reduced below a certain number, no disposition shall be registered without an order of the Court or the registrar after inquiry into title. Subject to general rules, such an entry will be obligatory unless it is shown to the registrar's satisfaction that the joint proprietors

(*u*) *Ibid.* s. 53 (1).
(*y*) *Ibid.* s. 53 (3).
(*a*) *Ibid.* s. 55.
(*x*) *Ibid.* s. 53 (2).
(*z*) *Ibid.* s. 54.
(*b*) *Ibid.* s. 57.

are entitled for their own use, or can give valid receipts for capital money, or one of them is a trust corporation (*c*).

Writs, orders, deeds of arrangement, pending actions and other interests which, in the case of unregistered land, may be protected by registration under the Land Charges Act, 1925, are, where the land or charge affected is registered, to be protected only by lodging a creditor's notice, bankruptcy inhibition or a caution against dealing with the land or charge (*d*).

Registration of a land charge (other than a local land charge) is to be effected only by registering a notice, caution or other prescribed entry, but before a land charge, including a local land charge, is realised it must be registered as a registered charge (*e*).

No mortgage, charge, debenture, debenture stock, debenture trust deed or other incumbrance created by a company affects any registered land or charge, notwithstanding it may be registered under the Companies (Consolidation) Act, 1908, unless registered or protected by caution or otherwise under the Land Registration Act, 1925 (*f*).

As soon as practicable after registration of a petition in bankruptcy as a pending action under the Land Charges Act, 1925, the registrar is to register a notice, called a creditor's notice, against the title of any proprietor of any registered land or charge which appears to be affected, and such registration will protect all creditors (*g*)..

As soon as possible after a receiving order in bankruptcy is registered under the Land Charges Act, 1925, the registrar is to register an inhibition, called a bankruptcy inhibition, against the title of any proprietor of any registered land or charge which appears to be affected (*h*).

(*c*) Land Registration Act, 1925, s. 58 (3).
(*d*) *Ibid.* 59 (1).
(*e*) *Ibid.* s. 59 (2).
(*f*) *Ibid.* s. 60.
(*g*) *Ibid.* s. 61 (1).
(*h*) *Ibid.* s. 61 (3).

Where under a disposition to a purchaser in good faith for money or money's worth such purchaser is registered as proprietor of an estate or charge, then, notwithstanding that an available act of bankruptcy has been committed by the person making the disposition, the title of his trustee in bankruptcy acquired after 1925 is, from the date of the disposition, to be void as against such purchaser, unless at the date of the disposition either a creditor's notice or a bankruptcy inhibition had been registered; but a purchaser with notice of an available act of bankruptcy, or of the receiving order, or of the adjudication, is not to be deemed to take in good faith (*i*).

No liability is imposed by this provision to make any search under the Land Charges Act, 1925 (*i*).

Notice of a bankruptcy petition after 1925, when no creditor's notice has been registered under the Land Registration Act, 1925, is not notice or evidence of any act of bankruptcy on which the petition is founded (*k*).

After the entry of a bankruptcy inhibition (without prejudice to rights having priority over the bankrupt's estate) no dealing with the registered land or charge, other than the registration of the trustee in bankruptcy, is to be entered on the register until the inhibition is vacated (*l*).

The land or charge certificate is to be delivered to the registered proprietor or to be deposited in the registry, as the proprietor may prefer (*m*).

Where a charge or mortgage (otherwise than by deposit) is registered or is protected by a caution in a specially prescribed form, the land certificate is to be deposited in the registry until the charge or mortgage is cancelled (*n*). Equitable mortgages can be created by deposit of the land certificate (*o*).

Settled land is to be registered in the name of the tenant for life or statutory owner (*p*). The registrar may, notwith-

(*i*) *Ibid.* s. 61 (6).
(*k*) *Ibid.* s. 61 (2).
(*l*) *Ibid.* s. 61 (4).
(*m*) *Ibid.* s. 63.
(*n*) *Ibid.* s. 65.
(*o*) *Ibid.* s. 66.
(*p*) *Ibid.* s. 86.

standing any restriction entered on the register, grant a certificate that an intended registered disposition is authorised by the settlement or otherwise, and will be registered, and a purchaser who obtains such a certificate is protected thereby; but where capital money is paid to the persons to whom the same is required to be paid by a restriction or into Court, no such certificate is required (*q*).

Dispositions off the register create "minor interests" only (*r*). Such interests are capable of being overridden by registered dispositions for valuable consideration (*s*). Minor interests take effect only in equity, but may be protected by notices, cautions, inhibitions and restrictions according to the rules (*t*). A minor interest subsisting at the commencement of 1926 is not to fail by reason of its being converted into an equitable interest, but after 1925 a minor interest in registered land can only be created where an equivalent equitable interest could have been validly created if the land had not been registered (*u*).

The priority of minor interests subsisting or capable of taking effect before 1926 as legal estates is not affected (*x*), but priorities as regards dealings after 1925 between assignees of life interests, remainders, reversions and executory interests are to be regulated by the order of the priority cautions or inhibitions lodged against the proprietor of the registered estate effected, but, save as aforesaid, the priority between persons interested in minor interests is not to be affected by the lodgment of cautions or inhibitions (*y*).

The Limitation Acts apply to registered land in the same manner and to the same extent as those Acts apply to land not registered, except that where the estate of the registered proprietor would be extinguished it shall not be extinguished, but shall be deemed to be held by the proprietor in trust for the person who has acquired a title against the proprietor, but without prejudice to the estates and

(*q*) Land Registration Act, 1925, s. 89.
(*r*) *Ibid.* s. 101 (1).
(*s*) *Ibid.* s. 101 (2).
(*t*) *Ibid.* s. 101 (3).
(*u*) *Ibid.* s. 101 (5).
(*x*) *Ibid.* s. 102 (1).
(*y*) *Ibid.* s. 102 (2).

interests of any other person interested in the land whose estate or interest is not extinguished (*z*). Any person claiming to have acquired a title under the Limitation Acts can apply to be registered as proprietor thereof (*a*), and may be registered with an absolute good leasehold, qualified or possessory title, as the case may require (*b*).

Land within the jurisdiction of the Middlesex or Yorkshire Registries, wherein an estate is registered under the Land Registration Act, is as respects such estate exempt from such jurisdiction (*c*).

Requisitions.

1. *A notice being on the register of the land contracted to be sold, the purchaser must have full particulars of the rights intended to be thereby protected so that he can ascertain whether or not the vendor will be able to override them by the disposition to the purchaser.*

2. *As there is a caution on the register, there will be a delay in completion if the caution is not previously removed from the register to allow the cautioner to appear before the registrar, and the purchaser cannot safely pay over the purchase-money until after the caution has been disposed of. The vendor should accordingly communicate with the cautioner and get the matter disposed of prior to completion.*

3. *There is a restriction on the register requiring the consent of A. B. to any disposition of the registered proprietor, and this consent must accordingly be obtained before completion.*

(*z*) *Ibid.* s. 75 (1).
(*b*) *Ibid.* s. 75 (3).
(*a*) *Ibid.* s. 75 (2).
(*c*) *Ibid.* s. 136.

RENTCHARGES.

The remedies for recovery of rentcharges are reproduced in the Law of Property Act, s. 121, with a proviso that the creation of a legal term of years cannot after 1925 be created unless the rentcharge is held for a legal estate (*d*).

A rentcharge may be granted, reserved, charged or created out of another rentcharge (*e*), and where this has been attempted before 1926 the transaction is confirmed (*f*). Where such a derivative rentcharge has been created, the remedy when the derivative rentcharge is unpaid is to appoint a receiver of the original rentcharge (*g*).

SEARCHES.

Although searches ought always to have been made on the occasion of every purchase and mortgage, they were frequently not made in actual practice. Prior to 1926 the risk so incurred was perhaps negligible, as registration under the Land Charges Act, 1900, did not constitute notice. The law is now altered, and registration of any instrument or matter required or authorised to be registered under the Land Charges Act, 1925, constitutes actual notice of the instrument or matter (*h*). Conversely, a purchaser is not prejudicially affected by notice of any instrument or matter capable of being registered under the Land Charges Act, 1925, which is void or not enforceable against him under that Act by reason of non-registration (*i*).

An official search may be made by delivering at the registry a requisition, whereupon the registrar will make

(*d*) Law of Property Act, 1925, ss. 121 (4) and 8 (2).
(*e*) *Ibid.* s. 122 (1).
(*f*) *Ibid.* s. 122 (4).
(*g*) *Ibid.* s. 122 (2), (3).
(*h*) *Ibid.* s. 198.
(*i*) *Ibid.* s. 199.

the search required and issue a certificate of the result (*k*). In favour of a purchaser or intending purchaser the certificate is conclusive affirmatively or negatively, as the case may be (*k*).

Five registers are required to be kept at the Land Registry in pursuance of the Land Charges Act, 1925 (*l*):—

(1) Pending actions.
(2) Annuities.
(3) Writs and orders affecting land.
(4) Deeds of arrangement affecting land.
(5) Land charges.

1. *Pending Actions.*

These include petitions in bankruptcy filed after 1925 (*m*). They will be registered in the name of the estate owner or other person whose estate or interest is intended to be affected. Registration has effect for five years, after which it requires renewal from time to time, each renewal having effect for five years (*m*).

A pending action, including a petition in bankruptcy, will not affect a purchaser without express notice thereof unless it is registered (*n*), but this only applies in the case of a petition in bankruptcy in favour of a purchaser of a legal estate in good faith for money or money's worth without notice of an available act of bankruptcy, and such a purchaser will be protected even if he has express notice of a petition, unless a receiving order has been registered as an order affecting land under the Land Charges Act, 1925, for, as regards any transfer or creation of a legal estate, an unregistered petition is not notice of any act of bankruptcy alleged therein (*n*).

No protection is afforded by the Land Charges Act, 1925, to a purchaser with notice of an available act of bankruptcy or to a purchaser who does not obtain a legal estate, even if in either case he has no knowledge or notice of the

(*k*) Land Charges Act, 1925, s. 17.
(*l*) *Ibid.* s. 1.
(*m*) *Ibid.* s. 2.
(*n*) *Ibid.* s. 3.

petition and the petition is not registered; but conveyances and assignments by persons who have committed an act of bankruptcy made before the date of the receiving order to persons having at the time no notice of an available act of bankruptcy committed before that time and dealing *bonâ fide* for valuable consideration are protected by the Bankruptcy Act, 1914 (*o*), even if such transactions are themselves acts of bankruptcy (*p*), but such a purchaser who, after the receiving order, pays his money to the bankrupt is not thus protected (*q*).

It is conceived that, with regard to a bankrupt's after-acquired property, all transactions of a bankrupt after his bankruptcy with any person dealing with him *bonâ fide* and for value are still valid against the trustee until the trustee intervenes (*r*) and that the old rules are not abrogated in this respect even if both the petition and the receiving order have been registered; but a prudent purchaser will hardly be likely to complete if either a petition or receiving order is found to be registered without making the fullest inquiries.

The provisions of the Land Charges Act, 1925, on account of the extension of the *lis pendens* principle to bankruptcies, make a search for pending actions much more necessary than formerly was the case.

2. *Annuities.*

This is an expiring register, as no annuity may be registered in the register after the commencement of 1926 (*s*). The only annuities which have ever been required to be registered are rentcharges or annuities for a life or lives or for a term of years or greater estate terminable with life or lives created otherwise than by marriage, settlement or will after 25th April, 1855. Any such annuity will after

(*o*) Sect. 45.
(*p*) *Shears* v. *Goddard,* (1896) 1 Q. B. 406.
(*q*) *Ex parte Rabbidge, Re Pooley,* 8 Ch. D. 367.
(*r*) *Cohen* v. *Mitchell,* 25 Q. B. D. 262; Bankruptcy Act, 1914, s. 47.
(*s*) Land Charges Act, 1925, s. 4.

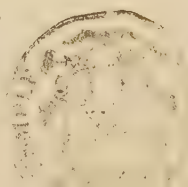
1925 be void against a creditor or purchaser of any interest in the land charged therewith unless registered either as an annuity or a land charge (*t*), and if not registered a purchaser can neglect it even if he has notice of it (*u*).

On the other hand, if the annuity is registered, except in cases where the annuity is overreached by the conveyance, a purchaser will take subject to it even without notice (*x*), and he cannot, therefore, escape the liability, as he might sometimes have done prior to 1926 in the case of an annuity taking effect in equity only by reason of his being a purchaser for value without notice of the liability.

It will be seen that it is of much more importance to search this register after 1925 than before 1926, for although these annuities are not common, there is usually no other means of finding out their existence. As an abstract will rarely go back much more than thirty years after 1926 (*y*), the search will rarely have to be extended back as far as the commencement of the register.

With regard to any annuities for lives created before the 25th April, 1855, or by marriage settlement or by will after that date, a purchaser for value obtaining the legal estate will only take subject thereto if he has actual or constructive notice of them. This was always the law with regard to annuities taking effect in equity only, and in consequence of the conversion of annuities for lives which were prior to 1926 limited as legal rentcharges into equitable interests, the principle will in future apply to annuities for lives created before the 25th April, 1855, or by marriage settlement, or by will after that date not secured by a legal term of years, even though they were originally limited as legal rentcharges. If such annuities do not arise under a settlement or trust for sale and, although created before 1926, are assigned after 1925, they will, like all annuities not so arising created after 1925, be capable of being registered

(*t*) *Ibid.* s. 5.
(*u*) Law of Property Act, 1925, s. 199.
(*x*) *Ibid.* s. 198.
(*y*) *Ibid.* s. 44.



as land charges under the heading Class C (iii), "General equitable charges," dealt with *infra* (*z*), and if so registered a purchaser for value will take subject to them (*a*), unless, of course, the disposition overrides them under some special enactment.

Provision is made for the closing of the annuity register when all the entries in the register have been vacated (*b*), but there is no provision for renewal, and the only safe course is, accordingly, for the search to extend from the commencement, though this is practically impossible in most cases, as, prior to the commencement of the abstract of title, the purchaser does not know in what names to search.

3. *Writs and Orders affecting Land.*

There are three classes capable of registration:—

(A) Those issued or obtained for the purpose of enforcing a judgment, statute or recognizance, or for the purpose of enforcing any inquisition finding a debt due to the Crown or any obligation or specialty due to the Crown.

(B) Orders appointing a receiver or sequestrator of land.

(C) Receiving orders in bankruptcy made after 1925 (*c*).

The entry is made against the estate owner or other person whose land, if any, is affected by the writ or order (*c*). Registration has effect for five years, after which it requires renewal from time to time, each renewal having effect for five years (*c*).

Every writ and order capable of registration, and every delivery in execution or other proceeding taken pursuant to any such writ or order, is void against a purchaser unless registered (*d*), but this only applies in the case of a receiving order in bankruptcy in favour of a purchaser of a legal estate in good faith for money or money's worth without notice of

(*z*) Land Charges Act, 1925, s. 10.
(*a*) Law of Property Act, 1925, s. 198.
(*b*) Land Charges Act, 1925, s. 4.
(*c*) *Ibid.* s. 6.
(*d*) *Ibid.* s. 7.

an available act of bankruptcy (*e*). It would seem that notice of a receiving order must be notice of an available act of bankruptcy, so that a purchaser having notice of a receiving order is bound thereby, although not registered.

If the petition is registered, but not the receiving order, the receiving order will be void against a purchaser of a legal estate in good faith for money or money's worth without notice of an available act of bankruptcy, but he cannot safely proceed, as if an adjudication follows (as it almost invariably does), the title of the trustee in bankruptcy will be protected in consequence of the mere registration of the petition (*e*).

4. *Deeds of Arrangement affecting Land.*

The entry is made against the name of the debtor (*f*). Registration has effect for five years, after which it requires renewal from time to time, each renewal having effect for five years (*f*). A year's grace is given, so that during the year 1926 it will be necessary to search either from the commencement, 1st January, 1889, or at least for twelve years last past, but after 1926 a five years' search will be all that is required. A deed of arrangement, whether made before or after the commencement of the Land Charges Act, 1925, will be void against a purchaser, even with notice thereof (*g*), unless it is registered or re-registered (*h*).

Any document within the Deeds of Arrangement Act, 1914, is a deed of arrangement within the meaning of the Land Charges Act, 1925 (*i*), and a purchaser after 1925 may consequently be affected by such a document if it is registered, although he may have no notice of it and it does not affect the legal estate (*k*).

(*e*) *Ibid.* s. 7.
(*f*) *Ibid.* s. 8.
(*g*) Law of Property Act, 1925, s. 199.
(*h*) Land Charges Act, 1925, s. 9.
(*i*) *Ibid.* s. 20.
(*k*) Law of Property Act, 1925, s. 198.

5. *Land Charges.*

These are divided into five classes:—

Class A. A rent or annuity or principal money payable by instalments or otherwise, with or without interest, being a charge otherwise than by deed upon land created *pursuant to the application of some person* either before 1926 or after 1925—

(i) Under the provisions of any Act of Parliament for securing to any person either money spent by him, or his costs and expenses, or money advanced for repaying such money, costs or expenses to another person;
(ii) Under the Land Drainage Act, 1861, s. 35;
(iii) Under the Agricultural Holdings Act, 1923, ss. 20 or 41, or any previous similar enactment;
(iv) Under the Tithe Act, 1918, ss. 4 or 6;
(v) Under the Tithe Annuities Apportionment Act, 1921, s. 1;
(vi) Under the Law of Property Act, 1922, Schedule XII. para. 6;

but not including a rate or scot (*l*).

With regard to (i)—(v) inclusive, the statutory land charges mentioned are those capable of being registered before 1926.

The paragraph referred to under heading (vi) provides that the statutory enfranchisement which takes place by virtue of the Law of Property Act, 1922 (*m*), shall not affect any liability for the construction, maintenance, cleansing or repair of works required for the protection or general benefit of any land within a manor or for abating nuisances therein, and that any person interested in enforcing the liability may apply to the Court to ascertain or apportion the liability and to charge the same upon or against the land or any interest therein, and the Court may make such

(*l*) Land Charges Act, 1925, s. 10. (*m*) Sect. 128.

order as it thinks fit, and the charge, when made, shall be deemed to be a land charge and registered accordingly (*n*).

Class B. A charge on land (not being a local land charge) of any of the kinds described in Class A. created otherwise than pursuant to the application of any person either before 1926 or after 1925; but if created before 1926, only if acquired under a conveyance made after 1925.

These charges were held not to be capable of registration under the previous Acts (*o*).

Class C. A mortgage, charge or obligation of any of the following kinds affecting land created either before 1926 or after 1925; but if created before 1926, only if acquired under a conveyance made after 1925:—

(i) Any legal mortgage not being a mortgage protected by a deposit of documents relating to the legal estate affected and (where the whole of the land affected is within the jurisdiction of the Middlesex or Yorkshire Registries) not being registered in the local deeds register.

These mortgages are called "puisne mortgages."

(ii) An equitable charge acquired by a tenant for life or statutory owner within the meaning of the Settled Land Act, 1925, under the Finance Act, 1894, or any other statute by reason of the discharge by him of any death duties or other liabilities, and to which special priority is given by the statute.

These charges are called "limited owner's charges."

(iii) Any other equitable charge which is not secured by a deposit of documents relating to the legal estate affected and does not arise or affect an interest arising under a trust for sale or a settlement, and is not included in any other class of land charge.

These charges are called "general equitable charges." They will include equitable mortgages, annuities for lives

(*n*) Law of Property Act, 1922, 12th Schedule, (6).
(*o*) *Reg.* v. *Vice-Registrar of Land Office Registry,* 24 Q. B. D. 178.

created after 1925, or before 25th April, 1855, for value. Annuities for lives created by will or marriage settlement will arise under a settlement in the wide definition of the term in the Settled Land Act, 1925, but equitable charges of every description not so arising, other than those expressly mentioned, will be included.

(iv) Any contract by an estate owner or by a person entitled at the date of the contract to have a legal estate conveyed to him, to convey or create a legal estate, including a contract conferring, either expressly or by statutory implication, a valid option of purchase, a right of pre-emption or any other like right.

These contracts are called "estate contracts." A contract for the settlement of land by an estate owner or by a person entitled to an equitable interest capable, when in possession, of subsisting at law, an entailed interest or a base fee or any corresponding interest in leasehold land is an estate contract, provided that, if made by a person other than an estate owner, the interest of that person takes effect free from all equitable interests and powers under any prior settlement (*p*).

Class D.—(i) Any charge for death duties leviable or payable on a death after 1925.

(ii) A covenant or agreement (not being a covenant or agreement made between a lessor or lessee) restrictive of the user of land entered into after 1925.

These covenants or agreements are called "restrictive covenants."

(iii) Any easement, right or privilege over or affecting land created or arising after 1925 and being merely an equitable interest.

These rights are called "equitable easements."

Class E. An annuity which might have been registered in the register of annuities had that register not been closed,

(*p*) Settled Land Act, 1925, s. 11.

but which was not registered. This only applies to annuities created before 1925.

Land charges after 1925 must be registered in the name of the estate owner, but a land charge registered prior to 1926 in the name of a person other than an estate owner, in accordance with an Act then in force and replaced by the Land Charges Act, 1925, may remain so registered (*q*). Land charges prior to 1926 were registrable against the person beneficially entitled to the first estate of freehold, who, in the majority of instances, would correspond to the estate owner.

Land charges in Classes A. and B. take effect, when registered, as if created by a deed of charge by way of legal mortgage, but without prejudice to the priority of the charge (*r*).

Land charges in Class A., if unregistered at the time of completion, are void against a purchaser of the land or any interest therein if created after 1888 (*s*), or if assigned after 1888 and not registered within one year after assignment (*t*).

Land charges in Classes B. and C., if unregistered at the time of completion, are void against a purchaser of the land or any interest therein if created after 1925 (*s*), or if assigned after 1925 and not registered within one year after assignment (*t*), except that an estate contract entered into after 1925 will only be void against a purchaser of a legal estate for money or money's worth.

Special provisions are made with reference to a puisne mortgagee. He may register, if he wishes, before any transfer of the mortgage is made (*u*). If he does so, he is, of course, protected (*x*). If he does not do so, then if he had only an equitable interest prior to 1926 he does not obtain any benefit by reason of his mortgage being converted into a legal mortgage, and in favour of a purchaser in good faith, without notice, for valuable consideration in

(*q*) Land Charges Act, 1925, s. 10.
(*r*) *Ibid.* s. 11.
(*s*) *Ibid.* s. 13.
(*t*) *Ibid.* s. 14.
(*u*) *Ibid.* s. 10.
(*x*) Law of Property Act, 1925, s. 198.

money or money's worth, his interest is deemed to remain an equitable interest, and such a purchaser, if obtaining the legal estate, would accordingly take free from his mortgage (*y*).

It may be noticed that the definitions of "purchaser" in the Land Charges Act, 1925 (*z*), in Part I. of the Law of Property Act, 1925, and elsewhere in the same Act are not identical (*a*).

In the Land Charges Act, 1925, a purchaser means any person, including a mortgagee or lessee, who, for valuable consideration, takes any interest in land or a charge in land.

In the Law of Property Act, 1925, a purchaser means a purchaser in good faith for valuable consideration, and includes a lessee, mortgagee or other person who, for valuable consideration, acquires an interest in property, except that in Part I. of this Act (and elsewhere, where so expressly provided) a purchaser only means a person who acquires an interest in or charge on property for money or money's worth, and in reference to a legal estate includes a chargee by way of legal mortgage.

The First Schedule to the Law of Property Act is introduced by sect. 39, which occurs in Part I., and purchaser in that Schedule would only, therefore, refer to a purchaser for money or money's worth; but sects. 197 and 198, previously frequently referred to, are included in Part XI., and in those sections valuable consideration will include other considerations than those in money or money's worth, and, in particular, valuable consideration includes marriage, but in no case includes a nominal consideration in money (*b*).

Registration of a general equitable charge, estate contract, restrictive covenant or equitable easement in the Yorkshire Registry is sufficient in place of registration at the Land Registry (*c*).

(*y*) Law of Property Act, 1925, 1st Schedule, Part VII. (6).
(*z*) Sect. 20 (8).
(*a*) Sect. 205 (xxi).
(*b*) Law of Property Act, 1925, s. 205 (xxi).
(*c*) Land Charges Act, 1925, s. 10.

No deed of arrangement, land charge of Class A., or other instrument made or created after the 30th July, 1900, and capable of registration under the Land Charges Act, 1925, or any Act which it replaces, need be registered in the Middlesex Registry; and no land charge of Class B., C. or D. made or created after 1925 and capable of being registered under the Land Charges Act, 1925, except a puisne mortgage, need be registered in the Middlesex Registry.

In the case of a land charge for securing money created by a company registration under sect. 93 of the Companies (Consolidation) Act, 1908, is sufficient in place of registration under the Land Charges Act, 1925 (*d*).

It will be seen from all these complicated provisions that it is most important after 1925 to search for land charges. Every mortgage affecting a legal estate in land made after 1925, whether legal or equitable (not being a deposit of documents relating to the legal estate in land), ranks according to its date of registration as a land charge pursuant to the Land Charges Act, 1925 (*e*), and although this provision does not apply to land within the Yorkshire and Middlesex registration districts, the provisions as regards notice make it necessary to search for land charges even when the land is within these districts.

Searches in the Yorkshire and Middlesex Registry are dealt with under the heading "Registration of Deeds and Wills."

Searches for bankruptcies at the Bankruptcy Court are dealt with under the heading "Bankruptcy," and searches for local land charges are dealt with under the heading "Local Land Charges."

Requisitions.

1. *A* lis pendens *is registered against the name of the vendor. The purchaser must be fully satisfied that it in no way affects the property contracted to be sold.*

2. *A rentcharge for the life of X. is registered against the name of the vendor. The purchaser must*

(*d*) Sect. 10. (*e*) Law of Property Act, 1925, s. 97.

be satisfied that this annuity does not affect the land or, if it does, that the vendor is entitled to override the same. Failing this, the entry must be vacated or the annuitant must join in the conveyance to the purchaser.

3. *A puisne mortgage was registered against the name of the vendor. It must be abstracted and the mortgagee must join in the conveyance to the purchaser or must endorse a receipt on the mortgage.*

4. *An estate contract has been registered against the name of the vendor. Does this apply to any part of the property contracted to be sold?*

5. *Were any, and, if so, what, searches made on the occasion of the vendor's purchase? Has the vendor an official certificate of the result thereof?*

6. *The usual searches at the Land Registry office will be made immediately before completion. If there is anything registered which will not be then discharged and removed from the register it should be at once disclosed.*

7. *The purchaser reserves the right of making requisitions upon anything which may be found registered on making the usual searches.*

SETTLED LAND.

In no other matters has the new legislation introduced more fundamental alterations in the practice of conveyancing than in the dealing with what is called "Settled Land." When land is settled in trust for sale it is not to be treated as settled land. Settlements of this description are dealt with under the heading "Trusts for Sale." In certain cases in settlements on trust for sale the powers of the trustees may be delegated to a person of full age entitled to the rents and profits (*f*), and the Court has power

(*f*) Law of Property Act, 1925, s. 29.

to make a vesting or other order for giving effect to a proposed transaction where the trustees refuse to delegate their powers (*g*), and in cases where on 1st January, 1926, an order under sect. 7 of the Settled Land Act, 1884, was in force enabling a tenant for life to exercise his former powers, the trustees will be deemed to have delegated their powers to such tenant for life (*h*); but all such powers in the case of settlements in trust for sale are after 1925 to be executed in the name of the trustees. The fundamental alterations previously referred to in no way affect such settlements. They are entirely outside the purview of the Settled Land Act, 1925.

Land for the purposes of the Settled Land Act, 1925, includes land of any tenure and mines and minerals, whether or not held apart from the surface, buildings and parts of buildings and other corporeal hereditaments, also a manor, advowson, rent, and other incorporeal hereditaments, and an easement, right, privilege or benefit over or derived from land, and any estate or interest in land, but not an undivided share in land (*i*).

Settled land is any land which is or is deemed to be the subject of a settlement (*j*).

A settlement is any deed, will, agreement for a settlement or other agreement, Act of Parliament or other instrument, or any number of instruments, whenever made, under or by virtue of which land after 1925 stands for the time being—

(i) limited in trust for any persons by way of succession;

(ii) limited in trust for any person in possession—

(a) for an entailed interest whether or not capable of being barred or defeated;

(b) for an estate in fee simple or for a term of years subject to an executory limitation, gift or

(*g*) *Ibid.* s. 30.
(*h*) *Ibid.* s. 29.
(*i*) Settled Land Act, 1925, s. 117 (1) (ix).
(*j*) *Ibid.* s. 2.

disposition over on failure of his issue or in any other event;

(c) for a base or determinable fee or for a corresponding interest in leasehold land;

(d) being an infant, for an estate in fee simple or a term of years;

(iii) limited in trust for any person for an estate in fee simple or for a term of years contingently on the happening of any event;

(iv) limited to or in trust for a married woman of full age in possession for an estate in fee simple or for a term of years or any other interest with a restraint on anticipation;

(v) charged, whether voluntarily or in consideration of marriage, or by way of family arrangement, and whether immediately or after an interval, with the payment of any rentcharge for the life of any person or any less period, or of any capital, annual or periodical sums for the portions, advancement, maintenance or otherwise for the benefit of any persons with or without any term of years for securing or raising the same (*k*).

The same land may, of course, be subject to several settlements within the meaning of this definition one within another. Thus, before 1926, it often happened that a man was tenant for life under a settlement made on his marriage, and if he sold as tenant for life under that settlement he could override the pin-money and jointure of his own wife and the portions of his own younger children, but could not override his mother's or grandmother's jointures or the portions of his brothers and sister, uncles and aunts; he was also tenant for life under the compound settlement composed of his father's settlement and his own settlement, and by selling as tenant for life under that compound settlement he could override his mother's jointure and the portions of his brothers and sisters, but still could not override his

(*k*) Settled Land Act, 1925, s. 1 (1).

grandmother's jointure and the portions of his uncles and aunts, and he was also tenant for life of the compound settlement comprising his grandfather's settlement, his father's settlement and his own settlement, and by selling as tenant for life under this paramount compound settlement he could override all jointures and portions and give a clean title to the fee simple, but in order to do this it would, of course, be essential that trustees of the paramount compound settlement must have been appointed, and in general such trustees could only be appointed by the Court. Such compound settlements will, of course, occur after 1925. Indeed, the illustration was a specially simple case, for compound settlements frequently comprise eight or ten instruments. Wherever land is subject to a compound settlement, references in the Settled Land Act, 1925, to the settlement are to be construed as meaning such compound settlement (*l*), which no doubt means where there are several compound settlements the paramount compound settlement, which includes all subsisting family charges.

Where an infant is beneficially entitled to land for an estate in fee simple or for a term of years, and by reason of an intestacy or otherwise there is no instrument under which the interest of the infant arises or is acquired, a settlement is deemed to have been made by the intestate or by the person whose estate the infant has acquired. An infant is deemed to be entitled in possession notwithstanding any subsisting right to dower (not assigned by metes and bounds) affecting the land, and such a right of dower is to be deemed to be an interest comprised in the subject of the settlement and coming to the dowress by virtue of the settlement (*m*).

It will be noticed this clause is confined to an infant in possession. Apparently land in the hands of any other heir-at-law of a widow's husband where dower has not been assigned by metes and bounds is not settled land, and in

(*l*) *Ibid.* s. 1 (1). (*m*) *Ibid.* s. 1 (3).

such a case the concurrence of the heir-at-law of full age and the widow will still be necessary.

Where dower has been assigned by metes and bounds, letters of administration or probate granted in respect of the estate of the husband must be deemed a settlement made by the husband (*n*). Presumably after assignment the dowress (if of full age) is a tenant for life, as she is for the time being beneficially entitled for her life to the land assigned to her. The only argument against this is that, following the Settled Land Act, 1882, a tenant by the curtesy is apparently quite unnecessarily expressly given the powers of a tenant for life (*o*).

An estate or interest not disposed of by a settlement and remaining in or reverting to the settlor or any person deriving title under him is, for the purposes of the Settled Land Act, 1925, an estate or interest comprised in the settlement (*p*). This provision binds the Crown (*q*).

Where a settlement creates an entailed interest incapable of being barred or a base or determinable fee or any corresponding interest in leasehold land, and where the subject of a settlement is an entailed interest or a base or determinable fee or any corresponding interest in leasehold land, the reversion or right of reverter on the cesser of the interest so created or settled is deemed to be an interest comprised in the subject of the settlement and limited by the settlement (*r*). These provisions also bind the Crown (*q*).

A settlement is deemed to continue so long as—

(a) any limitation, charge or power of charging under the settlement subsists or is capable of being exercised; or

(b) the person who, if of full age, would be entitled as beneficial owner to have the land vested in him for a legal estate is an infant (*s*).

(*n*) Settled Land Act, 1925, s. 1 (3).
(*o*) *Ibid.* s. 20 (1) (vii).
(*p*) *Ibid.* s. 1 (4).
(*q*) *Ibid.* s. 1 (6).
(*r*) *Ibid.* s. 1 (5).
(*s*) *Ibid.* s. 3.

Tenants for Life.

The Settled Land Act, 1925, preserves the distinction made by the Settled Land Act, 1882, between tenants for life and persons having the powers of tenants for life, a distinction apparently having no practical consequences.

The person of full age who is for the time being beneficially entitled under a settlement to the possession of settled land for his life is, for the purposes of the Act, the tenant for life of that land under that settlement (*t*).

If there are two or more persons of full age so entitled as joint tenants, they together constitute the tenant for life (*u*). If there are two or more persons of full age so entitled and they are not all of full age, such one or more of them as is or are of full age is or constitute the tenant for life (*x*).

A person who is tenant for life is deemed to be such notwithstanding the settled land or his estate or interest therein is incumbered or charged in any manner and to any extent, and notwithstanding any assignment by operation of law or otherwise of his estate or interest under the settlement whether before or after he came into possession, other than an assurance which extinguishes that estate or interest (*y*).

Where the estate or interest of a tenant for life has been assured to the next remainderman or reversioner either before 1926 or after 1925, then if and when such remainderman would, if the tenant for life were dead, be or have the statutory powers of a tenant for life in reference to the property affected by the assurance, the statutory powers cease to be exerciseable by the former tenant for life, and the statutory powers thenceforth become exerciseable as if he were dead, without prejudice to the rights of incumbrancers (*z*).

This applies notwithstanding any intervening term of years or charge, and whether or not the estate of the remainderman or reversioner was liable to be defeated, and

(*t*) *Ibid.* s. 19 (1).
(*u*) *Ibid.* s. 19 (2).
(*x*) *Ibid.* s. 19 (3).
(*y*) *Ibid.* s. 19 (4).
(*z*) *Ibid.* s. 105 (1).

whether or not the estate or interest was in possession at the date of the assurance.

Each of the following persons being of full age when his estate or interest is in possession has the powers of a tenant for life:—

(i) A tenant in tail of every description, excepting only a tenant in tail where the land in respect whereof he is restrained from barring or defeating his estate tail was purchased with money provided by Parliament in consideration of public services.

(ii) A tenant in fee simple or for a term of years subject to an executory limitation, gift or disposition over on failure of issue or in any other event.

(iii) A person entitled to a base or determinable fee or to any corresponding interest in leasehold land.

(iv) A tenant for years determinable on life not holding merely under a lease at a rent.

(v) A tenant for the life of another not holding merely under a lease at a rent.

(vi) A tenant for his own or any other life or for years determinable on life whose estate is liable to cease in any event during that life, whether by expiration of the estate or by conditional limitation or otherwise, or to be defeated by an executory limitation, gift or disposition over, or is subject to a trust for accumulation of income for any purpose.

(vii) A tenant by the curtesy.

(viii) A person entitled to the income of land under a trust or direction for payment thereof to him during his own or any other life, whether or not subject to expenses of management or to a trust for accumulation of income for any purpose, or until sale of the land, or until forfeiture, cesser or determination by any means of his interest therein, unless the land is subject to an immediate binding trust for sale (*a*).

(*a*) As to the retrospective operation of this paragraph, see Settled Land Act, 1925, 4th Schedule, 15.

(ix) A person beneficially entitled to land for an estate in fee simple or for a term of years subject to any estate, interests, charges or powers of charging under a settlement.

(x) A married woman entitled to land for an estate in fee simple or for a term of years subject to a restraint on anticipation (*b*).

Each of these persons is put in the same position in all respects while his or her estate lasts, as a tenant for life (*c*). The estate of a tenant by the curtesy is deemed to have arisen under a settlement made by his wife (*d*), but as, after 1925, an estate by the curtesy can rarely arise where the wife was not a tenant in tail, there will usually be a paramount settlement subsisting, under which the tenant by the curtesy has the powers of a tenant for life.

In certain cases the owner of legal estate, even if not a tenant for life or a person otherwise having powers of a tenant for life, can himself create a settlement.

Where a person of full age is beneficially entitled in possession to a legal estate subject to any equitable interests or powers, then for the purpose of overreaching such interests or powers he may, notwithstanding any stipulation to the contrary, by deed declare that the legal estate is vested in him on trust to give effect to all equitable interests and powers affecting the legal estate, but the deed must be executed by two or more individuals approved of or appointed by the Court, who will be the trustees of the settlement (*e*).

As an alternative, a trust corporation, which means the Public Trustee or a corporation either appointed by the Court in any particular case to be a trustee or entitled by rules made under the Public Trustee Act, s. 4 (3), to act as custodian trustees, may be appointed trustee in the place of two individuals approved by the Court (*f*).

(*b*) Settled Land Act, 1925, s. 20 (1).
(*c*) *Ibid.* s. 20 (2).
(*d*) *Ibid.* s. 20 (3).
(*e*) *Ibid.* s. 21 (1).
(*f*) *Ibid.* s. 117 (1) (xxx).

Thereupon, so long as any of the equitable interests and powers subsist, the person so entitled and his successors in title have the powers of a tenant for life, and are, accordingly, able to overreach such equitable interests and powers (*f*).

In addition to legal estates, interests or charges, which are entirely outside these provisions and include registered land charges of Classes A. and B., registered local land charges, legal easements and puisne mortgages, there are several specified equitable interests which cannot be overreached in this manner. These are:—

(1) Any equitable interests protected by a deposit of documents relating to the legal estate affected.
(2) Restrictive covenants or agreements.
(3) Equitable easements, that is to say, easements, liberties and privileges being only equitable interests.
(4) Estate contracts, that is to say, contracts to convey or create a legal estate, or granting an option of purchase, or any like right.
(5) Pending actions, writs and orders affecting land, deeds of arrangement, and charges for death duties acquired by the Inland Revenue. As to all of these, only when registered under the Land Charges Act, 1925 (*g*).

With regard to restrictive covenants, equitable easements and estate contracts created or entered into after 1925, these will, in any case, be void in favour of a purchaser of a legal estate for money or money's worth, unless registered as land charges (*h*); and if created before 1926, they will be void against a purchaser of a legal estate for value without notice.

Estate contracts entered into before 1926 and assigned after 1925 can be registered as land charges (*i*), and if so registered a purchaser will be deemed to have notice of them,

(*f*) Settled Land Act, 1925, s. 21 (1).
(*g*) *Ibid.* s. 21.
(*h*) Land Charges Act, 1925, s. 13.
(*i*) *Ibid.* s. 10.

but if not registered within one year after assignment (*k*) a purchaser of a legal estate for money or money's worth will take free from them even if he has notice of them (*l*).

The interweaving of the provisions of the Settled Land Act, 1925, Land Charges Act, 1925, and the Law of Property Act, 1925, is very confusing and difficult to remember. In what has been previously stated, the apparent effect of these three Acts has been given, and the wording of the Acts not followed.

It will be noticed that a tenant for life can overreach, in the manner indicated, a limited owner's charge (*m*) which is acquired by paying death duties (*n*), and a general equit-charge (*m*), and an annuity for life or lives, or a life rentcharge, as to all of these even if registered (*m*). A life annuity, even if originally created as a legal rentcharge, becomes a mere equitable interest after 1925 in consequence of the limitation after 1925 of the possible legal estates and interests which can exist after that date (*o*).

If there is no tenant for life or person having the powers of a tenant for life under a settlement, then the powers of a tenant for life are exerciseable by any person of full age on whom such powers are, by the settlement, expressed to be conferred, and in any other case by the trustees of the settlement (*p*).

This applies to trustees of a settlement of land purchased with money provided by Parliament in consideration of public services where there is a tenant in tail restrained from barring or defeating his estate tail, but where such tenant in tail is of full age and capacity the powers cannot be exercised without his consent. A purchaser is not concerned to see or inquire whether such consent has been given (*q*).

(*k*) Law of Property Act, 1925, s. 198.
(*l*) *Ibid.* s. 199; and Land Charges Act, 1925, s. 13.
(*m*) Settled Land Act, 1925, s. 21.
(*n*) Land Charges Act, 1925, s. 10 (1), Class C.
(*o*) Law of Property Act, 1925, s. 1.
(*p*) Settled Land Act, 1925, s. 23 (1).
(*q*) *Ibid.* s. 23 (2).

Trustees of Settlement.

The expression "the trustees of the settlement," where used in the Settled Land Act, 1925, means the trustees for the purposes of this Act. These are the following persons in order:—

(i) Those, if any, who are for the time being under a settlement trustees with power of sale of the settled land (subject or not to the consent of any person), or with power of consent or approval of the exercise of such a power.

(ii) Those, if any, who are by the settlement declared to be trustees for the purposes of the Settled Land Acts, 1882 to 1890, or any of them, or the Settled Land Act, 1925.

(iii) Those, if any, who are for the time being under a settlement trustees with power of sale or upon trust for sale of other land comprised in the settlement, and subject to the same limitations as the land to be sold or otherwise dealt with, or with power of consent to or approval of the exercise of such a power of sale.

(iv) Those, if any, who are for the time being under the settlement trustees with future power of sale or under a future trust for sale of the settled land, or with power of consent to or approval of the exercise of such a future power of sale, and whether the power or trust takes effect in all events or not.

(v) Those, if any, appointed by deed to be trustees of the settlement by all the persons who, at the date of the deed, were together able, by virtue of their beneficial interests or by the exercise of an equitable power, to dispose of the settled land in equity for the whole estate, the subject of the settlement (*r*).

Paras. (i), (iii) and (iv) are to apply as if the powers therein referred to had not been made exercisable by the

(*r*) Settled Land Act, 1925, s. 30 (1).

tenant for life or other persons who, during a minority or at any other time where there is no tenant for life, have the powers of a tenant for life (*s*). These persons and the trustees of the settlement are in the Act referred to as the "statutory owner" (*t*).

If a settlement is created by will or has arisen by the effect of an intestacy and there are no other trustees of the settlement, the personal representatives of the deceased, until other trustees are appointed, are the trustees of the settlement, but this does not enable a single personal representative (not being a trust corporation) to act as such trustee alone. He must, before acting, appoint an additional trustee to act with him, as he is empowered to do by the Trustee Act, 1925 (*u*).

Where a settlement takes or has taken effect by reference to another settlement and does not appoint trustees of the settlement, the trustees of the settlement to which reference is made are the trustees of the settlement by reference (*x*). This is, of course, without prejudice to any appointment by the Court of trustees of the settlement by reference (*y*).

There are some useful provisions relating to the trustees of compound settlements.

Persons who are, for the time being, trustees of a settlement which is subsisting or deemed to be subsisting are trustees of any compound settlement comprising that settlement and any instruments subsequent in date or operation (*z*). This also is without prejudice to any appointment by the Court of trustees of the compound settlement (*a*).

Where settled land is or has been at any time expressed to be disposed of under a compound settlement of which trustees were appointed by the Court, and the capital money (if any) was paid to the trustees of such compound settlement, and the person is or was tenant for life or statutory owner of the land disposed of under an instrument mentioned in the order as constituting the compound settlement,

(*s*) *Ibid.* s. 30 (2).
(*t*) *Ibid.* s. 117 (1) (xxvi).
(*x*) *Ibid.* s. 32 (1).
(*z*) *Ibid.* s. 31 (1).
(*u*) *Ibid.* s. 30 (2).
(*y*) *Ibid.* s. 32 (2).
(*a*) *Ibid.* s. 31 (2).

the title of the person to whom the disposition is made is not impeachable on the ground—

(a) That the instruments mentioned in the order did not constitute a compound settlement;

(b) That they were not all the instruments constituting the compound settlement; or

(c) That any of the instruments mentioned in the order did not form part of the settlement of the land disposed of, or had ceased to form part of the settlement at the date of the disposition.

This does not prejudice the rights of any person to any estate, interest or charge which would not have been overreached if the disposition had been made by or on behalf of the tenant for life or statutory owner of an instrument mentioned in the order, and there had been trustees of that instrument, and the capital money (if any) had been paid to the trustees (*b*). In other words, paramount estates, charges and interests, including those arising under a settlement paramount to the compound settlement, will not be prejudiced. Finally, trustees of the settlement, as previously to 1926, may be appointed by the Court.

It must be remembered that after 1925, unless a trust corporation is acting, two trustees will be necessary in every case to receive notices (*c*) and to receive capital money (*d*). This is the case notwithstanding the settlement may authorise capital money to be received by a single trustee. A *bonâ fide* purchaser is not concerned to inquire with respect to the giving of notices (*e*).

Method of Settling Land.

After 1925 an entirely new method of settling land is introduced and made compulsory, and having regard to the wide definition of a settlement, the new provisions are of the utmost importance. Even a voluntary charge of a sum of money or an annuity for life or the imposition of a restraint

(*b*) Settled Land Act, 1925, s. 33 (2).
(*c*) *Ibid.* s. 101.
(*d*) *Ibid.* s. 94 (1).
(*e*) *Ibid.* s. 94 (2).

on anticipation will be sufficient to constitute a settlement, so that a settlement of land now extends far beyond what used to be termed a strict settlement, although land settled in trust for sale is entirely outside the provisions of the Settled Land Act, 1925.

Every settlement of a legal estate in land *inter vivos* must (except where otherwise expressly provided) be effected by two deeds, namely, (i) a vesting deed, and (ii) a trust instrument, and if the settlement is made or attempted to be made in any other way it will not operate to transfer or create a legal estate (*f*).

The trust instrument, though of primary importance as regards the persons beneficially entitled, is not of much importance from the point of view of the purchaser, as in general he will not have to inquire into it at all. It is provided by the Settled Land Act, 1925 (*g*) that the trust instrument shall—

(a) declare the trusts of the settled land;
(b) appoint or constitute trustees of the settlement;
(c) contain the power, if any, to appoint new trustees of the settlement;
(d) set out, either expressly or by reference, any powers intended to be conferred by the settlement in extension of those conferred by the Settled Land Act, 1925;
(e) bear any *ad valorem* stamp duty which may be payable in respect of the settlement.

The vesting deed for giving effect to a settlement or for conveying settled land to a tenant for life or statutory owner during the subsistence of the settlement is called in the Act a principal vesting deed and must contain the following statements and particulars:—

(a) A description, either specific or general, of the settled land.
(b) A statement that the settled land is vested in the person or persons to whom it is conveyed or in

(*f*) *Ibid.* s. 4 (1). (*g*) *Ibid.* s. 4 (3).

whom it is declared to be vested upon the trusts from time to time affecting the settled land.

(c) The names of the persons who are the trustees of the settlement.

(d) Any additional or larger powers conferred by the trust instrument relating to the settled land which, by virtue of the Settled Land Act, 1925, operated as if conferred on a tenant for life.

(e) The name of any person for the time being entitled under the trust instrument to appoint new trustees of the settlement (*h*).

The statements and particulars may be incorporated by reference to an existing vesting instrument, and where there is a settlement subsisting before 1st January, 1926, by reference to that settlement and to any instrument whereby land has been conveyed to uses or upon the trusts of that settlement, but not, save as last aforesaid, by reference to a trust instrument nor by reference to a disentailing deed (*i*).

Errors will not vitiate the vesting deed (*k*). It is desirable that vesting deeds should follow the forms given in the Act (*l*) so far as possible, but, of course, any form which gives the requisite particulars will be quite valid.

Where the settlement is created by the will of an estate owner who died after 1925, the will is, for the purposes of the Act, a trust instrument, the personal representatives of the testator hold the settled land on trust if and when required so to do to convey it to the person who will be the tenant for life or statutory owner, if more than one, as joint tenants (*m*).

On the death of a tenant for life or statutory owner, or the survivor of two or more tenants for life or statutory owners, during the subsistence of the settlement, his per-

(*h*) Settled Land Act, 1925, s. 5 (1).
(*i*) *Ibid.* s. 5 (2).
(*k*) *Ibid.* s. 5 (3).
(*l*) *Ibid.* 1st Schedule, Forms 1 and 2.
(*m*) *Ibid.* s. 6.

sonal representatives hold the settled land upon trust to convey it to the next tenant for life or statutory owner, if more than one, as joint tenants. If the settlement comes to an end, the person entitled, either beneficially or as personal representative or as trustee for sale, is entitled to a conveyance; if there are more than one, as joint tenants (*n*).

Any such conveyance by personal representatives may be made by an assent in writing signed by them.

Every assent made after 1925 must be in writing in favour of a named person, otherwise it will not pass a legal estate (*o*). The statutory covenants may be implied in an assent by a person being expressed to assent as personal representative (*p*). Where the vesting is carried out by a vesting assent, it is desirable that the form given (*q*) should be followed, though there is no absolute necessity for this.

Where a deed is executed by a person of full age for the purpose of overreaching equitable interests or powers, the deed is to have effect as a principal vesting deed (*r*).

The instrument (if any) under which his estate arises or is acquired and the instrument (if any) under which the equitable interest or powers are subsisting must be deemed to be the trust instrument.

Where there is no such instrument as last aforesaid, then a deed (which will take effect as a trust instrument) is to be executed contemporaneously with the vesting deed and shall declare the trusts affecting the land (*s*).

The persons stated in the principal vesting deed to be the trustees of the settlement for the purposes of the Act are also trustees of the trust instrument for those purposes (*t*).

They can, of course, give a receipt for capital money (*u*).

(*n*) *Ibid.* ss. 7, 8 (1).
(*o*) Administration of Estates Act, 1925, s. 36 (4).
(*p*) *Ibid.* s. 36 (3).
(*q*) Settled Land Act, 1925, 1st Schedule, Form 5.
(*r*) *Ibid.* s. 21 (1).
(*s*) *Ibid.* s. 21 (1) (b).
(*t*) *Ibid.* s. 21 (1) (c).
(*u*) *Ibid.* s. 21 (1) (d).

Certain instruments or settlements, though not strictly trust instruments, are deemed to be trust instruments. These are:—

(i) Any instrument executed, or in case of a will coming into operation, after 1925 which is deemed to be a settlement by virtue of the Act.

(ii) A settlement which is deemed to have been made by a person after 1925 by the Act.

(iii) An instrument *inter vivos* intended to create a settlement of a legal estate in land executed after 1925 which does not comply with the requirements of the Act with respect to the method of making such a settlement.

(iv) A settlement made after 1925, including a settlement by the will of a person who dies after 1925 of any of the following interests:—

(a) An equitable interest in land which is capable when in possession of subsisting at law;

(b) An entailed interest;

(c) A base or determinable fee or any corresponding interest in leasehold land;

but only if and when the interest settled takes effect free from all equitable interests and powers under every prior settlement (*x*).

In these cases the trustees of the settlement may, or on the request of the tenant for life or statutory owner shall, execute a principal vesting deed in the same manner as if the instrument or settlement were a trust instrument (*y*). If there are no trustees of the settlement an application must be made to the Court for the appointment of such trustees (*z*).

Where land is purchased with capital moneys or a rentcharge is reserved on the grant of settled land after 1925, the land must be conveyed to and the rentcharge will

(*x*) Settled Land Act, 1925, s. 9 (1).
(*y*) *Ibid.* s. 9 (2). (*z*) *Ibid.* s. 9 (3).

become vested in the tenant for life (*a*). The conveyance or grant is called a subsidiary vesting deed.

A subsidiary vesting deed on the acquisition of land to be made subject to the settlement must contain—

(a) particulars of the last or only principal vesting instrument;

(b) a statement that the land conveyed is to be held upon and subject to the same trusts and powers as the land comprised in the principal vesting deed;

(c) the names of the persons who are the trustees of the settlement;

(d) the name of any person entitled to appoint new trustees (*b*).

The subsidiary vesting deed reserving a rentcharge on a grant of settled land must contain—

(a) a statement that the rentcharge is vested in the grantor and is subject to the settlement which immediately before the grant was subsisting with respect to the land out of which it was reserved;

(b) particulars of the last or only principal vesting instrument (*c*).

A subsidiary vesting deed is not vitiated by errors therein (*d*).

In cases where money is liable to be invested in the purchase of land to be settled and there is no land in respect of which a principal vesting deed can be framed, the purchase deed is a principal vesting deed and must be framed accordingly (*e*).

In case of difficulties the Court may make a vesting order in lieu of a principal or subsidiary vesting deed, and the order is then to contain the like statements and particulars (*f*).

Where a tenant for life or statutory owner has become entitled to have a principal vesting deed or vesting assent

(*a*) *Ibid.* s. 10 (1). (*b*) *Ibid.* s. 10 (2).
(*c*) *Ibid.* s. 10 (3). (*d*) *Ibid.* s. 10 (3).
(*e*) *Ibid.* s. 10 (1). (*f*) *Ibid.* s. 12.

executed in his favour, then until a vesting instrument of the settled land is executed any purported disposition thereof *inter vivos* by any person other than a personal representative, not being a disposition which he has power to make in right of his equitable interests or powers under a settlement, will not take effect except in favour of a purchaser of a legal estate without notice of any settlement, but will operate only as a contract for valuable consideration to carry out the transaction after the requisite vesting instrument has been made, and a purchaser of a legal estate will not be concerned with such a disposition unless the contract is registered as an estate contract (*g*).

Any contract after 1925 for the settlement of land—

(i) by an estate owner,

(ii) by a person entitled to—

(a) an equitable interest capable, when in possession, of subsisting at law, or

(b) an entailed interest, or

(c) a base or determinable fee or any corresponding interest in leasehold land,

but only if and when the interest of the person entitled takes effect free from all equitable interests and powers under every prior settlement, if any,

is deemed an estate contract and may be registered accordingly as a land charge and effect must be given thereto by a vesting deed and trust instrument (*h*).

Where there is no tenant for life, any person of full age on whom the powers of a tenant for life are by the settlement expressed to be conveyed has, or, if there are no such persons, the trustees of the settlement have the powers of a tenant for life (*i*).

Where the tenant for life is an infant, then, if the settled land is vested in a personal representative, such personal representative, until a principal vesting instrument has been

(*g*) Settled Land Act, 1925, s. 13.
(*h*) *Ibid.* s. 11 (1). (*i*) *Ibid.* s. 23.

executed, has the powers of a tenant for life and also the powers of the trustees of the settlement. In every other case where the tenant for life is an infant the trustees of the settlement can exercise the powers of a tenant for life (*k*).

If the tenant for life is a lunatic or defective, his committee or receiver may in his name or on his behalf under an order in lunacy exercise the powers of a tenant for life (*l*).

If the tenant for life is a married woman, she may herself exercise the powers of a tenant for life without the concurrence of her husband whether or not she is entitled for her separate use and notwithstanding a restraint on anticipation (*m*).

If there are two or more persons jointly constituting the tenant for life, the powers can be exercised by such one or more of them as is or are of full age (*n*); but if all of such persons are infants, the powers are exerciseable by the personal representative or trustees in the same way as if a single infant was tenant for life (*o*).

The powers of a tenant for life are not capable of assignment or release, and remain exercisable by him notwithstanding any assignment by operation of law or otherwise (*p*), and a contract by a tenant for life not to exercise his powers is void (*q*).

If the tenant for life has assigned his estate or interest for value before 1926, the assignee's rights cannot be affected without his consent, except that a lease may be made without fine unless the assignee is actually in possession, and the consent of the assignee is not required to an investment of capital money in authorised trust securities (*r*).

If the assignment for value is made after 1925, the consent of the assignee is not requisite, except that, if the assignment so provides, or if it takes effect by operation of

(*k*) *Ibid.* s. 26.
(*l*) *Ibid.* s. 28.
(*m*) *Ibid.* s. 25.
(*n*) *Ibid.* s. 7 (3).
(*o*) *Ibid.* s. 26 (5).
(*p*) *Ibid.* s. 104 (1).
(*q*) *Ibid.* s. 104 (2).
(*r*) *Ibid.* s. 104 (3).

the law of bankruptcy and after notice of the assignment to the trustees, no investment or application of capital money for the time being affected by the assignment may be made without the consent of the assignee, except an investment in securities authorised for the investment of trust money. Notice of any intended transaction must be given to the assignee, but a purchaser is not concerned to see or inquire whether such notice has been given (*s*).

After 1925 a purchaser is not concerned to see or inquire whether the consent of an assignee under an assignment made before 1926 has been given (*t*). An instrument whereby a tenant for life on or after the 18th August, 1890, in consideration of marriage or as part or by way of any family arrangement not being a security for payment of money advanced, has made an assignment or created a security upon his estate or interest under the settlement is to be deemed one of the instruments creating the settlement, and not an assignment for value. This only applies to assignments before the 18th August, 1890, if consistent with the nature or terms of the disposition (*u*).

The legal estate in settled land does not vest in the trustee in bankruptcy of an estate owner unless and until the estate owner becomes absolutely and beneficially entitled to the settled land free from all limitations, powers and charges taking effect under the settlement (*x*).

Where the estate or interest of a tenant for life has been or is assured to the person next entitled in remainder or reversion, then if and when such remainderman or reversioner would, if the tenant for life were dead, be or have the powers of a tenant for life, the statutory powers of the tenant for life cease to be exercisable by him and become exercisable as if he were dead, but without prejudice to the rights of any incumbrancer (*y*).

Any provision purporting or attempting to forbid a tenant for life to exercise any power given by the Settled Land

(*s*) Settled Land Act, 1925, s. 104 (4).
(*t*) *Ibid.* s. 104 (5).
(*u*) *Ibid.* s. 104 (11).
(*x*) *Ibid.* s. 103.
(*y*) *Ibid.* s. 105.

Act, 1925, is void, and any provision attempting or tending or intended by a gift over of settled land or a gift over of other property, or by the imposition of any condition, or by forfeiture, or in any other manner whatever to prohibit or prevent the tenant for life from exercising, or to induce him to abstain from exercising, or to put him into a position inconsistent with his exercising any power so given or his right to require the settled land to be vested in him is void so far as it purports or attempts or tends or is intended to have or would or might have that operation (*z*).

An estate or interest limited to continue so long as a person abstains from exercising any such power or right as aforesaid takes effect as an estate or interest for the period for which it would continue if that person were to abstain from exercising the power or right discharged from the liability to determination (*z*).

Thus, if a house be limited in trust for a person so long as he continues to reside in it, he will still be able to exercise the powers of a tenant for life over the house, and whether he sells it or lets it he will not lose his rights under the settlement.

Additional or larger powers may be conferred on a tenant for life or on the trustees of the settlement, and any additional or larger powers operate in like manner as if conferred by the Settled Land Act, 1925 (*a*).

Any power (not being merely a power of revocation or appointment) relating to the settled land conferred by the settlement on the trustees of the settlement or other persons exerciseable for any purpose is, after 1925, exerciseable by the tenant for life or statutory owner as if it were an additional power conferred by the settlement on the tenant for life (*b*).

The protection afforded to purchasers is a matter of primary importance. On a sale, exchange, lease, mortgage, charge or other disposition a purchaser dealing in good faith with a tenant for life or statutory owner, as against all

(*z*) *Ibid.* s. 106. (*a*) *Ibid.* s. 109. (*b*) *Ibid.* s. 108.

persons entitled under a settlement, is conclusively taken to have given the best price, consideration or rent, as the case may require, that could reasonably be obtained, and to have complied with all the requisitions of the Settled Land Act, 1925 (*c*).

A purchaser of a legal estate in settled land, except as hereinafter mentioned, is not bound or entitled to call for the production of the trust instrument or any information concerning that instrument or any *ad valorem* stamp duty thereon, and whether or not he has notice of its contents he is (except as hereinafter mentioned) bound and entitled, if the last or only principal vesting instrument contains the statements and particulars required by the Settled Land Act, 1925, to assume that—

(a) the person in whom the land is, by the principal vesting instrument, vested or declared to be vested is the tenant for life or statutory owner, and has all the powers of a tenant for life, including such additional or larger powers, if any, as are therein mentioned;

(b) the persons by the said instrument stated to be trustees of the settlement, or their successors, appearing to be duly appointed, are the properly constituted trustees of the settlement;

(c) the statements and particulars required by the Settled Land Act, 1925, and contained (expressly or by reference) in the said instrument were correct as the date thereof;

(d) the statements in any deed executed in accordance with the Settled Land Act, 1925, declaring who are the trustees for the purposes of the Settled Land Act, 1925, are correct;

(e) the statements contained in any deed of discharge executed in accordance with the Settled Land Act, 1925, are correct (*d*).

(*c*) Settled Land Act, 1925, s. 110 (1).
(*d*) *Ibid.* s. 110 (2).

There are, unfortunately, some exceptions to this wide protection, but they only apply to the first vesting instrument executed for the purpose of giving effect to—

(1) A settlement subsisting at the commencement of 1926.

(2) An instrument which, by virtue of the Settled Land Act, 1925, is deemed to be a settlement.

[The meaning of this clause is not too clear. If the words were taken in their widest sense they would apply to every settlement within the meaning of the Settled Land Act, 1925, and would consequently, so far as the first vesting instrument is concerned, negative to a large extent the whole preceding clause. If, on the other hand, they are confined to instruments "deemed to be settlements," as it is thought that they must be, this precise phrase scarcely occurs at all in the Act; indeed, the only clause using a similar phrase appears to be "Where dower has been assigned by metes and bounds, the letters of administration or probate granted in respect of the estate of the husband of the dowress shall be *deemed* a settlement made by the husband" (*e*); and as dower is almost abolished and is very rarely assigned by metes and bounds, the clause can have little practical application.]

(3) A settlement which, by virtue of the Settled Land Act, 1925, is deemed to have been made by any person after 1925.

[This apparently applies to an infant taking under an intestacy or otherwise where there is no instrument under which the interest of the infant or interest arises or is acquired, in which case a settlement is deemed to have been made by the intestate (*f*).

The estate or interest of a tenant by the curtesy is deemed to be an estate or interest arising under a settlement made by his wife (*g*), but where the curtesy arises out of an entailed interest there will usually be a paramount settlement under which the entail was originally created.]

(*e*) *Ibid.* s. 1 (3). (*f*) *Ibid.* s. 1 (2).
(*g*) *Ibid.* s. 20 (3).

(4) An instrument *inter vivos* intended to create a settlement of a legal estate in land, which is executed after the commencement of 1926 and does not comply with the requirements of the Settled Land Act, 1925, with respect to the method of effecting such a settlement (*h*).

In these four cases a purchaser is bound to see—

(1) That the land disposed of to him is comprised in such settlement or instrument.

(2) That the person in whom the settled land is, by such vesting instrument, vested or declared to be vested is the person in whom it ought to be vested as tenant for life or statutory owner.

(3) That the persons thereby stated to be the trustees of the settlement are the properly constituted trustees of the settlement (*h*).

These elaborate provisions were originally substituted by the Law of Property (Amendment) Act, 1924 (*i*), for the simple provision in the Law of Property Act, 1922 (*k*).

They seem to take away, to some extent, the protection afforded by the previous sub-section (*l*). In the case of settlements executed after the commencement of the Act, which have to be created by two deeds, the vesting deed and the trust instrument, the instruments previously enumerated are deemed to be trust instruments (*m*). In general, the vesting deed will alone be abstracted, and the purchaser knows nothing about the trust instrument, so it is by no means clear how he is to ascertain whether or not the trust instrument belongs to the enumerated Class (4), and consequently whether or not he is protected by the vesting deed. It is suggested that unless the trust instrument was a will, or the vesting deed clearly shows that the trust instrument does not fall within the excepted classes by some such words

(*h*) Settled Land Act, 1925, s. 110 (2).
(*i*) 4th Schedule, Part II. 27 (1).
(*k*) 5th Schedule, 13 (1).
(*l*) Sect. 110 (1).
(*m*) Settled Land Act, 1925, s. 9 (1); *see* p. 176.

as "Upon the trusts declared concerning the same by a trust instrument bearing even date with but intended to be executed contemporaneously with these presents, &c.," taken from the Forms of Instruments in the Act (*n*), the purchaser should require the trust instrument to be sufficiently abstracted to show that it does not fall within the excepted classes.

On a purchase of a legal estate in settled land from a personal representative a purchaser is entitled to assume that—

(1) If the capital money, if any, is paid to the personal representative, that such representative is acting under his statutory or other powers and requires the money for purposes of administration.

(2) If the capital money is paid by the direction of the personal representative to persons stated to be the trustees of a settlement, that such persons are the trustees, and that the personal representative is acting under his statutory powers during a minority.

(3) In any other case, that the personal representative is acting under his statutory or other powers (*o*).

Where no capital money arises under a transaction a disposition by a tenant for life or statutory owner in favour of a purchaser of a legal estate has effect notwithstanding that at the date of the transaction there are no trustees of the settlement (*p*).

It should be noticed that all these protections are only in favour of a purchaser of a legal estate, and a purchaser means a purchaser in good faith for value, and includes a lessee, mortgagee or other person who, in good faith, acquires an interest in settled land, including a chargee by way of legal mortgage (*q*).

(*n*) *Ibid.* 1st Schedule, Form No. 2.
(*o*) *Ibid.* s. 110 (3).
(*p*) *Ibid.* s. 110 (4).
(*q*) *Ibid.* s. 117 (1) (xxi).

The powers of a tenant for life are considerably enlarged. Thus in addition to an ordinary sale, a sale may be made in consideration, wholly or partly, of a perpetual or terminable rentcharge consisting of principal and interest combined, payable yearly or half-yearly (*r*).

In the case of a terminable rent the conveyance must distinguish the part attributable to principal and that attributable to interest, the part attributable to principal being capital money (*r*).

The conveyance must contain a covenant by the purchaser to pay rent and a condition for re-entry on non-payment within a time not exceeding thirty days (*s*), and a duplicate must be executed (*t*). Statements in or endorsed on the conveyance are sufficient evidence in favour of a purchaser (*u*). The consideration for a sale to any company incorporated by a special Act of Parliament or by an order, scheme or certificate having the force of an Act may consist wholly or partly of fully paid securities, such securities being vested in trustees and being deemed an authorised investment of capital money (*x*).

The power to exchange, given by the Settled Land Acts, 1882 to 1890, is continued (*y*), but the power to partition disappears in consequence of the abolition of legal estates in undivided shares.

The power of leasing is extended, the terms being:—

(1) In the case of a building lease, 999 years.

(2) In the case of a mining lease, 100 years.

(3) In the case of a forestry lease, 999 years.

(4) In the case of any other lease, 50 years (*z*).

The term during which a tenant for life can lease without notice of intention to the trustees to lease, and notwithstanding there are no trustees, is not extended beyond twenty-one years (*a*). A lease may, however, be made to

(*r*) Settled Land Act, 1925, s. 39 (2).
(*s*) *Ibid.* s. 39 (4) (i).
(*t*) *Ibid.* s. 39 (4) (ii).
(*u*) *Ibid.* s. 39 (4) (iii).
(*x*) *Ibid.* s. 39 (5).
(*y*) *Ibid.* ss. 38 (iii) and 40.
(*z*) *Ibid.* s. 41.
(*a*) *Ibid.* s. 42 (5).

take effect in reversion after an existing lease not having more than seven years to run at the date of the new lease as an alternative to taking effect in possession not later than one year after its date (*b*).

A forestry lease means a lease to the Forestry Commissioners for any purpose for which they are authorised to acquire land by the Forestry Act, 1919 (*c*). Such a lease may be made at a peppercorn or other rent less than the rent ultimately payable for the first ten years, and the rent may be made to vary according to the value of the timber on the land or the produce thereof cut, converted, carried away or otherwise disposed of. A fixed or minimum rent may be made to merge into a produce rent or any other provisions for sharing proceeds or profits with the Forestry Commissioners may be made (*d*). Timber in this provision is not confined to its strict legal meaning, but includes all forest products (*e*).

Power is given on dispositions to impose restrictions and make reservations and stipulations (*f*), and separate dealings with surface and minerals are authorised (*g*).

Options to purchase or take on lease settled land may be granted, but the option must be made exercisable within a period not exceeding ten years (*h*).

Power is given to a tenant for life to accept a surrender of a lease of settled land or a regrant of any land granted in fee simple with or subject to the reservation of a perpetual or terminable rentcharge (*i*). The tenant for life may also accept a lease provided no fine is payable out of capital money (*k*), may grant water rights to statutory bodies (*l*), grant land for public and charitable purposes (*m*), dedicate land for streets and open spaces (*n*), provide land for small dwellings and small holdings and dwellings for

(*b*) *Ibid.* s. 42 (1).
(*c*) Sect. 117 (1) (x).
(*d*) Settled Land Act, 1925, s. 48 (1).
(*e*) *Ibid.* s. 48 (2).
(*f*) *Ibid.* s. 49.
(*g*) *Ibid.* s. 50.
(*h*) *Ibid.* s. 51.
(*i*) *Ibid.* s. 52.
(*k*) *Ibid.* s. 53.
(*l*) *Ibid.* s. 54.
(*m*) *Ibid.* s. 55.
(*n*) *Ibid.* s. 56.

working classes, notwithstanding a better consideration might otherwise be obtained, subject to the limit that no more than two acres in an urban district and ten acres in a rural district may be provided without an order of the Court, unless the full consideration is paid or reserved for the excess (*o*).

Power is also given to the tenant for life with the consent of the trustees of the settlement to compromise, compound, submit to arbitration, or otherwise settle any claim, dispute or question whatsoever relating to the settled land either with or without taking any consideration in money (*p*).

The tenant for life may by deed vary leases and grants (*q*) and may give licenses and consents where the license, consent or approval of a covenantee is required for the user of the land in any manner, the erection of buildings, and any other matter relating to the land or any assignment, underletting or parting with the possession of property comprised in a lease, and the covenant enures for the benefit of the settled land (*r*).

He may also by deed apportion rents (*s*).

The tenant for life of a manor has all the powers of a lord of the manor, and the tenant for life of enfranchised land has all the powers of the tenant for the purpose of entering into any compensation agreement and matters incidental thereto (*t*).

A general power is given to the tenant for life to effect any transaction under an order of the Court if it could have been effected by an absolute owner (*u*). Transaction has a wide meaning and includes any sale, extinguishment of manorial incidents, exchange, assurance, grant, lease, surrender, reconveyance, release, reservation or other disposition, and any purchase or other acquisition, and any covenant, contract or option, and any application of capital money, and any compromise or other dealing; but it does not include an application of capital money in payment of

(*o*) Settled Land Act, 1925, s. 57.
(*p*) *Ibid.* s. 58.
(*q*) *Ibid.* s. 59.
(*r*) *Ibid.* s. 59.
(*s*) *Ibid.* s. 60.
(*t*) *Ibid.* s. 62.
(*u*) *Ibid.* s. 64 (1).

an improvement not authorised by the Settled Land Act, 1925 (*x*).

The improvements authorised by the Settled Land Act, 1925, are enumerated in the Third Schedule of the Act. Several of them are new. They are divided into three classes:—

(1) Those the costs of which are not liable to be replaced by instalments. (Part 1.)
(2) Those the costs of which the trustees or the Court *may* require to be replaced by instalments. (Part 2.)
(3) Those the costs of which the trustees and the Court *must* require to be replaced by instalments. (Part 3.)

No scheme is required. The trustees may apply capital money in payment on a certificate by a competent engineer or able practical surveyor employed independently of the tenant for life or on an order of the Court directing or authorising the payment (*y*). Where money is to be repaid by instalments it must be repaid by not less than fifty half-yearly instalments.

The tenant for life may mortgage to raise money for any of the following purposes:—

(1) Discharging an incumbrance.
(2) Paying for an authorised improvement.
(3) Equality of exchange.
(4) Extinguishing manorial incidents.
(5) Compensating the steward and discharging expenses in connection with the extinguishment.
(6) Redeeming a compensation rentcharge.
(7) Commuting additional rent payable on conversion of perpetually renewable leaseholds into a long term.
(8) Satisfying claims for compensation on the conversion of perpetually renewable leaseholds.
(9) Payment of costs of any of these transactions (*z*).

(*x*) *Ibid.* s. 64 (2). (*y*) *Ibid.* s. 84 (2). (*z*) *Ibid.* s. 71.

The tenant for life may also shift incumbrances (*z*), and vary interest and give additional security (*a*), and raise by mortgage the costs of such transactions (*b*).

The consent of the trustees to the sale of the principal mansion house (if any) and the pleasure grounds and park and lands usually occupied therewith is only required—

(1) If the settlement was made before 1926 and does not provide to the contrary.

(2) If the settlement was made after 1925 and expressly so provides (*c*).

No consent is in any case required where the house is usually occupied as a farmhouse, and where the site of the house with the pleasure grounds and park and lands usually occupied therewith does not exceed twenty-five acres in extent (*d*).

Dealings are permitted between the tenant for life and the trustees (*e*), notwithstanding the tenant for life may be one of the trustees (*f*), and in every such case the trustees, or where the tenant for life is one of the trustees the other or others of them, have all the powers of a tenant for life in reference to negotiating and completing the transaction (*g*).

The tenant for life has power to complete any authorised sale, exchange, lease, mortgage, charge, or other disposition by deed (*h*).

Such a deed, to the extent and in the manner to and in which it is expressed to operate, is effectual to pass the land conveyed, or easements, rights, privileges or other interests created discharged from all the limitations, powers and provisions of the settlement, and from all estates, in-

(*z*) Settled Land Act, 1925, s. 69.
(*a*) *Ibid.* s. 70.
(*b*) *Ibid.* s. 71.
(*c*) *Ibid.* s. 65 (1).
(*d*) *Ibid.* s. 65 (2).
(*e*) *Ibid.* s. 68 (1).
(*f*) *Ibid.* s. 68 (3).
(*g*) *Ibid.* s. 68 (2).
(*h*) *Ibid.* s. 72 (1).

terests and charges subsisting or to arise thereunder with the exception of:—

(i) All legal estates and charges by way of legal mortgage having priority to the settlement.

(ii) All legal estates and charges by way of legal mortgage which have been conveyed or created for securing money actually raised at the date of the deed.

(iii) All leases and grants at fee-farm rents or otherwise and all grants of easements, rights of common and other rights or privileges which—

(a) were previously granted or made for value or agreed so to be, and

(b) are at the date of the deed protected by registration under the Land Charges Act, 1925, if capable of registration thereunder (*i*).

Notwithstanding registration under the Land Charges Act, 1925, a disposition by the tenant for life overreaches an annuity or life rentcharge, a limited owner's charge or a general equitable charge, and such annuity or charge takes effect as if limited by the settlement (*k*).

The annuities expressly referred to are those within the meaning of Part II. of the Land Charges Act, 1925, and the definition there is confined to life annuities and rentcharges created after 25th April, 1855, and before 1st January, 1926, otherwise than by marriage settlement or will. Annuities created for value before 25th April, 1855, or after 1st January, 1926, are "general equitable charges." Annuities created by marriage settlement or will and charged upon land will arise under a settlement, as the wide definition of "settlement" in the Settled Land Act, 1925, is incorporated in the Land Charges Act, 1925, and these can be overridden under the Settled Land Act, 1925, provided that the trustees are trustees of the compound settlement, which includes the instrument granting the annuity.

(*i*) *Ibid.* s. 72 (2). (*k*) *Ibid.* s. 72 (3).

It will frequently happen that although there are trustees of a settlement, there are none of the paramount settlement which comprises the annuity. In such a case no doubt the annuitant might concur and make a good title to the purchaser, but a purchaser is not bound to accept a title made in this way (*l*). It is conceived that if the annuitant released his annuity and the succession duty (if any) payable on his death was commuted, the purchaser could not then refuse the title and there would be no necessity to go to the Court to appoint trustees of the paramount compound settlement comprising the annuity.

Similarly, a portions charge is not a general equitable charge within the definition contained in the Land Charges Act, 1925, as it arises under a settlement and must either be released or overridden by means of the settlement which comprises the portions charge or instrument creating it.

An alternative method of overriding all such charges is by the procedure indicated in sect. 21 of the Settled Land Act, 1925, previously detailed, but in this case the trustees of the settlement must either be two or more individuals approved or appointed by the Court or a trust corporation.

On the bankruptcy of an estate owner the legal estate in the settled land will not vest in the trustee of the estate owner until he becomes absolutely and beneficially entitled to the settled land free from all limitations, powers and charges taking effect under the settlement (*m*).

The powers of a tenant for life are not capable of assignment or release and do not pass to a person as being by operation of law or otherwise an assignee of the tenant for life and remain exercisable by him after and notwithstanding any assignment, whether or not the tenant for life was in possession when the assignment was made or took effect by operation of law (*n*), and a contract by a tenant for life not to exercise a power under the Act is void (*o*). In the

(*l*) Law of Property Act, 1925, s. 42 (1).
(*m*) Settled Land Act, 1925, s. 103.
(*n*) *Ibid.* s. 104 (1). (*o*) *Ibid.* s. 104 (2).

case of an assignment for value before 1926 the consent of the assignee is requisite except for the purpose of making leases at the best rent and without fine or for the investment of capital moneys in authorised trust securities (*p*), but a purchaser after 1925 is not concerned to see that the consent is obtained (*q*). If the assignment is for value and is made after 1925 no consent is required, except for investment in securities not authorised by statute for the investment of trust money (*r*).

Discharge of Settlement.

When the estate owner holds land free from all equitable interests and powers under a trust instrument, the persons who in the last or only principal vesting instrument or annex thereto are declared to be the trustees of the settlement or the survivors of them are bound to execute a deed declaring that they are discharged from the trust (*s*), and if they fail to do so an order of discharge may be obtained from the Court (*t*). Where the land is affected by a derivative settlement or trust for sale, the deed of discharge must contain a statement to that effect (*s*), and where a deed or order of discharge contains no statement to the contrary, a purchaser of a legal estate is entitled to assume that the land has ceased to be settled land, and is not subject to any trust for sale (*u*).

Requisitions.

1. *As there are equitable charges subsisting it will be necessary for the vendor to execute a deed declaring that the legal estate is vested in him upon trust to give effect to all interests and powers affecting the legal estate and for the deed to be executed by two trustees approved or appointed by the Court or by a trust cor-*

(*p*) *Ibid.* s. 104 (3).
(*q*) *Ibid.* s. 104 (5).
(*r*) *Ibid.* s. 104 (4).
(*s*) *Ibid.* s. 17 (1).
(*t*) *Ibid.* s. 17 (2).
(*u*) *Ibid.* s. 17 (3).

poration so that a title can be made under the Settled Land Act, 1925, *or, alternatively, for the land to be conveyed to two such trustees or a trust corporation on trust for sale.*

2. *Although no capital money arises on the proposed* [*exchange*], *a second trustee must be appointed so that the requisite notice can be given to two trustees. Although the purchaser is not concerned to inquire respecting the notice, he can hardly be protected where he knows, as here, that the notice cannot have been given.*

3. *The* [*portions charge*] *is paramount to the settlement of which the present trustees are trustees for the purposes of the Settled Land Act*, 1925. *It will be necessary for trustees of the compound settlement comprising the deed under which the* [*portions*] *arise and the subsequent settlement to be appointed by the Court to receive the purchase-money.*

4. *The jointure in favour of is paramount to the settlement of which the present trustees are trustees for the purposes of the Settled Land Act*, 1925. *It must be released prior to completion and any succession duty payable on its cesser compounded, unless it is proposed to have trustees of the compound settlement comprising the jointure appointed by the Court.*

SURVIVORSHIP.

In all cases where after 1925 two or more persons have died in circumstances rendering it uncertain which has survived the other, the deaths (subject to any order of the Court) are to be presumed to have occurred in order of seniority for all purposes affecting the title to property (*z*).

(*z*) Law of Property Act, 1925, s. 184.

TERMS ATTENDANT AND SATISFIED.

Where the purpose of a term of years created or limited out of freehold land becomes satisfied at any time, the term merges in the reversion expectant thereon and itself becomes satisfied (*a*).

Where the purposes of a term of years created or limited out of leasehold land were satisfied at the commencement of 1926, the term then merged in the reversion expectant thereon and became satisfied; but where the term was vested in the owner of the reversion, the merger and cesser take effect without prejudice to any protection afforded to the owner by the subsisting term (*b*).

Where the purposes of a term of years created or limited out of leasehold land become satisfied after 1925, the term will merge in the reversion expectant thereon and become satisfied (*c*).

In all these cases, where the purposes are satisfied only as respects part of the land comprised in the term, the provisions have effect as if a separate term had been created in regard to that part of the land (*d*).

TITLE DEEDS.

A vendor is entitled to retain documents of title—

(1) if he retains part of the land to which the documents relate; or

(2) if the document consists of a trust instrument or other instrument creating a trust which is still subsisting or an instrument relating to the appointment or discharge of a trustee of a subsisting trust (*e*).

(*a*) Satisfied Terms Act, 1845; Law of Property Act, 1925, s. 5 (1).
(*b*) Law of Property Act, 1925, 1st Schedule, Part II. 1.
(*c*) *Ibid.* s. 5 (2).
(*d*) *Ibid.* s. 5 (3) and 1st Schedule, Part II. 1.
(*e*) *Ibid.* s. 45 (9).

The second provision is new, but even before 1926 it was usual to retain documents of title under the circumstances mentioned.

The expense of production and inspection of documents of title in the possession of the vendor's mortgagee or trustee is no longer thrown on the purchaser (*f*). Notwithstanding the conversion of mortgages into terms of years, a first mortgagee of freeholds has the same right to possession of documents as if his security included the fee simple (*g*), and a first mortgagee of leaseholds has the same right to possession of documents as if his security had been effected by assignment (*h*).

A mortgagee whose mortgage is surrendered or otherwise extinguished is not liable on account of delivering documents of title in his possession to the person not having the best right thereto unless he has notice of the right or claim of a person having a better right (*i*). But it should be remembered that after 1925 registration in a local registry of a memorial creating a legal estate or charge by way of legal mortgage is notice to all persons and for all purposes whatsoever (*k*); and, similarly, registration under the provisions of the Land Charges Act, 1925, of an instrument required or authorised to be registered thereunder is deemed to constitute actual notice to all persons and for all purposes connected with the land affected (*l*). It is, therefore, arguable that a mortgagee ought to search before delivering the title deeds to a mortgagor on the payment off of a mortgage.

Requisition.

As the trust is no longer subsisting and documents creating it and appointing new trustees do not relate to any other property retained by the vendor, the original settlement and the appointments of new trustees must be handed over on completion.

(*f*) Law of Property Act, 1925, s. 45 (4).
(*g*) *Ibid.* s. 85 (1).
(*h*) *Ibid.* s. 85 (2).
(*i*) *Ibid.* s. 96 (2).
(*k*) *Ibid.* s. 197 (1).
(*l*) *Ibid.* s. 198.

TRUST CORPORATIONS.

The term "a trust corporation" is of such frequent occurrence in the Law of Property Act, 1922, the Settled Land Act, 1925, the Trustee Act, 1925, the Law of Property Act, 1925, the Administration of Estates Act, 1925, and the Supreme Court of Judicature (Consolidation) Act, 1925, that it is desirable to state the meaning under a separate section. The definition is the same in all, namely, the Public Trustee or a corporation either appointed by the Court in any particular case or entitled by rules made under the Public Trustee Act, 1906, s. 4 (3), to act as custodian trustee (*m*). The last reference means any corporation constituted under the law of the United Kingdom or of any part thereof and having a place of business there and empowered by its constitution to undertake trust business, and being either a company incorporated by special Act or Royal Charter, or a company having a share capital for the time being issued of not less than 250,000*l.*, of which not less than 100,000*l.* shall have been paid up in cash.

The "United Kingdom" means Great Britain and Northern Ireland; "trust business" means the business of acting as trustee under wills and settlements and as executor and administrator; "share capital" includes stock (*n*).

A trust corporation can act as a sole trustee for sale or for the purposes of the Settled Land Acts or for any other purposes, and it can also act as executor or administrator without a syndic, probate or letters of administration being granted to it directly (*o*).

Requisition.

Please supply a copy of the memorandum of association of , Limited, in order that the purchaser can be satisfied that the company is entitled to act as custodian trustee under the Public Trustee Rules.

(*m*) Law of Property Act, 1922, s. 188 (30); Settled Land Act, 1925, s. 117 (1) (xxx); Trustee Act, 1925, s. 68 (18); Law of Property Act, 1925, s. 205 (1) (xxviii); Administration of Estates Act, 1925, s. 55 (1) (xxvi); Judicature Act, 1925, s. 175 (1).

(*n*) Public Trustee (Custodian Trustee) Rules, 1925.

(*o*) Supreme Court of Judicature Act, 1925, s. 161.

TRUSTEES.

Important alterations are made in the law affecting trustees. Except where a trustee is a trust corporation, the receipt of a sole trustee is not a discharge to any person paying capital money arising under a disposition on trust for sale or under the Settled Land Act, 1925, whether the trust was created before 1926 or after 1925. With this exception, the provision enabling trustees to give a valid receipt applies notwithstanding anything to the contrary in the instrument (if any) creating the trust (*p*); but it is also provided that, notwithstanding anything to the contrary contained in the trust, neither a single trustee for sale, not being a trust corporation (*q*), nor a single trustee for the purposes of the Settled Land Act, 1925, not being a trust corporation (*r*), can give a valid receipt for capital moneys.

Where trustees are authorised by the instrument creating the trust or by law to pay or apply capital money for any purpose, they have and are deemed always to have had power to raise the money by sale or mortgage of all or any part of the trust property for the time being in possession (*s*). This does not apply to trustees of property held for charitable purposes or to trustees of a settlement for the purposes of the Settled Land Act, 1925, not being statutory owners (*t*). No purchaser or mortgagee is concerned to see that the money is wanted (*u*).

A trustee intending to remain out of the United Kingdom for a period exceeding one calendar month may by power of attorney delegate the execution or exercise of all or any trusts, powers and discretions vested in him as such trustee either alone or jointly with any other person or persons, but a person being the only other co-trustee and

(*p*) Trustee Act, 1925, s. 14.
(*q*) Law of Property Act, 1925, s. 27 (2).
(*r*) Settled Land Act, 1925, s. 94.
(*s*) Trustee Act, 1925, s. 16 (1).
(*t*) *Ibid.* s. 16 (2).
(*u*) *Ibid.* s. 17.

not being a trust corporation may not be appointed under this provision (*x*).

The power of attorney operates only while the donor is out of the United Kingdom (*y*), but a purchaser is protected in this respect (*z*). The power of attorney must be attested and filed at the Central Office within ten days after the execution thereof with a statutory declaration of intention to remain out of the United Kingdom for more than a month from the date of the declaration or the date therein mentioned. This statutory declaration and a statutory declaration by the donee of the power that the power has come into operation and has not been revoked are conclusive evidence in favour of any person dealing with a donee of the power. These provisions apply to a tenant for life and a statutory owner (*a*).

New provisions with regard to the power of applying income for maintenance are made (*b*). The power in the case of an instrument coming into operation after 1925 extends to any vested or contingent interest which carries the intermediate income (*c*). In this connection it must be remembered that in wills coming into operation after 1925 all contingent gifts carry the intermediate income unless it is otherwise disposed of (*d*). The power of maintenance is extended to future and contingent legacies by the parent of or a person standing *in loco parentis* to the legatee if and for such period as the legacy carries interest, and in any such case the rate of interest (if the income available is sufficient and subject to any rules of Court to the contrary) is to be five per cent (*c*). It also applies to a vested annuity as if the annuity were income of property (*e*).

It may be noticed that sect. 43 of the Conveyancing Act, 1881, which this section replaces, is not repealed by the Law of Property Act, 1925, "so far as it relates to instru-

(*x*) *Ibid.* s. 25 (1).
(*y*) *Ibid.* s. 25 (3).
(*z*) *Ibid.* s. 25 (8).
(*a*) *Ibid.* s. 25 (11).
(*b*) *Ibid.* s. 31.
(*c*) *Ibid.* s. 31 (3).
(*d*) Law of Property Act, 1925, s. 175.
(*e*) Trustee Act, 1925, s. 31 (4).

ments coming into operation before the commencement of 1926" (*f*).

A power of advancement to the extent of one-half the presumptive or vested share is given in the case of instruments coming into operation after 1925 (*g*).

A short method of conferring a protected interest upon an intended beneficiary is supplied by using the words "on protective trusts for the benefit of" (*h*). The precise trusts implied are stated in the Act (*h*).

In the case of settlements coming into operation before 1926, where there are more than four trustees of a settlement of land or more than four trustees holding land on trust for sale, no new trustees (except where as a result of the appointment the number is reduced to four or less) can be appointed until the number is reduced to less than four, and thereafter the number must not be increased beyond four (*i*). It is conceived that this provision is intended to prevent additional trustees being appointed when there are at the commencement of the Act exactly four trustees, although the wording of the section is "more than four." In the case of settlements and dispositions on trust for sale coming into operation after 1926, the number of trustees may not in any case exceed four, and if more than four persons are named as trustees the first four named who are able and willing to act are alone the trustees, and the number may not be increased beyond four (*k*).

These provisions do not apply to charity trustees or to trustees of a term for raising money or a term created under statutory remedies relating to annual sums charged on land (*l*).

Appointments of new trustees of conveyances of land on trust for sale and of the settlement of the proceeds of sale are to be made by separate instruments, but so as to secure that the same persons shall be the trustees of the conveyance

(*f*) Law of Property Act, 1925, 7th Schedule.
(*g*) Trustee Act, 1925, s. 32.
(*h*) *Ibid.* s. 33.
(*i*) *Ibid.* s. 34 (1).
(*k*) *Ibid.* s. 34 (2).
(*l*) *Ibid.* s. 34 (3).

in trust for sale as become the trustees of the settlement (*m*). Where new trustees of a trust instrument are appointed for the purpose of the Settled Land Act, 1925, a deed must be executed supplemental to the last or only principal vesting instrument containing a declaration that the persons who after such appointment are the trustees of the trust instrument are the trustees of the settlement for the purposes of the Act (*n*). When new trustees are appointed for the purpose of the Settled Land Act, 1925, a memorandum of their names and addresses must be annexed to the principal vesting instrument (*o*), and when new trustees of a conveyance of land in trust for sale relating to a legal estate are appointed a similar memorandum must be annexed to the conveyance on trust for sale (*p*).

The power of appointing new trustees arises where a trustee—

(1) is dead (*q*);
(2) remains out of the United Kingdom for more than twelve months (*q*);
(3) desires to be discharged from all or any of the trusts or powers (*q*);
(4) refuses to act therein (*q*);
(5) is unfit to act therein (*q*);
(6) is incapable of acting therein (*q*);
(7) is an infant (*q*);
(8) has been removed under a power contained in the instrument creating the trust (*r*);
(9) being a corporation, has been dissolved (*s*);

and the person or persons making the appointment may be appointed (*q*). In addition to this, where a sole trustee other than a trust corporation has been originally appointed to act, or where in the case of any trust there are not more than three trustees, none of them trust corporations, an additional trustee or additional trustees may be appointed

(*m*) *Ibid.* s. 35 (1).
(*n*) Settled Land Act, 1925, s. 35 (1).
(*o*) Trustee Act, 1925, s. 35 (2).
(*p*) *Ibid.* s. 35 (3).
(*q*) *Ibid.* s. 36 (1).
(*r*) *Ibid.* s. 36 (2).
(*s*) *Ibid.* s. 36 (3).

unless the instrument creating the trust or any statutory enactment provides to the contrary, but the number of trustees must not be increased beyond four by virtue of any such appointment (*t*).

The appointment is to be made by the person or persons nominated for the purpose by the instrument creating the trust, and if there is no such person able and willing to act, then by the surviving or continuing trustees or trustee for the time being or the personal representatives of the last surviving or continuing trustee (*u*).

Only the executors who have proved the will need join in the appointment (*x*), but a sole or last surviving executor intending to renounce or all the executors where they all intend to renounce have power before renouncing probate to make the appointment (*y*). These provisions are retrospective (*x*) (*y*).

A trustee who is dead includes the case of a person nominated trustee in a will but dying before the testator (*z*) and a continuing trustee includes a refusing or retiring trustee if willing to act (*z*).

Where a lunatic or defective is a trustee and is also beneficially entitled in possession to some interest in the trust property, no appointment of a new trustee in his place can be made by the continuing trustees or trustee without leave of a Judge or Master in Lunacy (*a*).

Newly appointed trustees have the same powers in all respects as the original trustees (*b*). The survivors or survivor of two or more trustees have also (subject to the restriction imposed in regard to receipts by a sole trustee) the same powers as the original trustees (*c*). Until the appointment of new trustees, the personal representatives or representative (subject to the same restriction) of a sole trustee or of the last surviving or continuing trustee is capable of exercising or performing any power or trust

(*t*) Trustee Act, 1925, s. 36 (6).
(*u*) *Ibid.* s. 36 (1) and (6).
(*x*) *Ibid.* s. 36 (4).
(*y*) *Ibid.* s. 36 (5).
(*z*) *Ibid.* s. 36 (8).
(*a*) *Ibid.* s. 36 (9).
(*b*) *Ibid.* s. 36 (2).
(*c*) *Ibid.* s. 18 (1) and (3).

capable of being exercised by the trustees of the trust (*d*). An executor who has renounced or not proved is not within this provision (*e*). In the case of trusts created before 1882, it was, prior to 1926, necessary to find some such intention expressed or implied in the trust instrument before it was safe to accept a title from the personal representatives of a sole or last surviving trustee.

On the appointment of a trustee the number of trustees may be increased, but not beyond four; separate trustees, not exceeding four, may be appointed for any part of the trust property held on distinct trusts, and it is not obligatory to appoint more than one new trustee where only one was originally appointed or to fill up the original number of trustees; but, except where only one trustee was originally appointed and a sole trustee when appointed will be able to give valid receipts for all capital money, a trustee will not be discharged from his trust unless there will be either a trust corporation or at least two individuals to act as trustees to perform the trust (*f*).

A statement in an instrument coming into operation after 1925, by which a new trustee is appointed for any purpose connected with land, that a trustee has remained out of the United Kingdom for more than twelve months or that he refuses or is unfit to act or is incapable of acting, or that he is not entitled to a beneficial interest in the trust property in possession, is in favour of a purchaser of a legal estate conclusive evidence of the matter stated (*g*). In favour of such a purchaser, any appointment depending on that statement and any vesting declaration consequent on the appointment is valid (*h*).

A trustee desirous of being discharged may by deed retire from the trust if his co-trustees, and such other person (if any) as is empowered to appoint new trustees, consent to his discharge and to the vesting in the co-trustees alone of the trust property, provided that either a trust corporation

(*d*) *Ibid.* s. 18 (2).
(*e*) *Ibid.* s. 18 (4).
(*f*) *Ibid.* s. 37.
(*g*) *Ibid.* s. 38 (1).
(*h*) *Ibid.* s. 38 (2).

or at least two individuals will remain to act as trustees to perform the trust (*i*).

Where a new trustee is appointed to perform any trust, or where by a deed a retiring trustee is discharged, the following property may be vested in a new trustee or new trustees by declaration:—Any interest in land subject to the trust, any chattel so subject, and the right to recover or receive any debt or other thing in action so subject (*k*), except:—

(a) Land conveyed by way of mortgage other than land conveyed on trust for securing debentures or debenture stock.

(b) Land held on lease or underlease containing a covenant, condition or agreement against assignment or disposing of the land without consent, unless such consent has been obtained or the assignment would not operate as a breach of covenant or give rise to a forfeiture.

(c) Any share, stock, annuity or property only transferable in books kept by a company or other body or in manner directed by Act of Parliament (*l*).

If the deed is made after 1925 it is, subject to any express provision to the contrary therein contained, to operate as if it contained an appropriate declaration extending to all the estates, interest and rights with respect to which a declaration could have been made (*m*).

The Court may, whenever it is expedient to appoint a new trustee or new trustees, and it is found inexpedient, difficult or impracticable to appoint without the assistance of the Court, make an order appointing a new trustee or new trustees (*n*), and when the Court appoints a corporation (other than the Public Trustee) it may authorise the corporation to charge for its services such remuneration as the Court thinks fit (*o*).

(*i*) Trustee Act, 1925, s. 39.
(*k*) *Ibid.* s. 40 (1), (2).
(*l*) *Ibid.* s. 40 (4).
(*m*) *Ibid.* s. 40 (1), (2).
(*n*) *Ibid.* s. 41.
(*o*) *Ibid.* s. 42.

Vesting orders may be made by the Court:—

(i) Where a new trustee has been appointed.

(ii) Where a trustee entitled to any interest in land is under disability, out of the jurisdiction, or cannot be found, or being a corporation has been dissolved.

(iii) Where it is uncertain who was the survivor of two or more trustees entitled to an interest in land.

(iv) Where it is uncertain whether the last trustee entitled to an interest in land is living or dead.

(v) Where there is no personal representative or it is uncertain who is the personal representative of a deceased trustee who was entitled to an interest in land.

(vi) Where a trustee entitled to an interest in land has refused or neglected to convey it as required by a person entitled to require a conveyance for twenty-eight days.

(vii) Where any interest in land is vested in a trustee and it appears to the Court to be expedient (*p*).

There are several other cases where vesting orders can be made, but as they merely re-enact with slight variations the existing law, it is not worth while to repeat them here.

Where the High Court has power to make orders in relation to lunatics or defectives who are trustees, the Judge or Master in Lunacy has not in general the power also, but in certain specified cases there is concurrent jurisdiction (*q*).

A general power is given to the Court to authorise dealings with the trust property which in the opinion of the Court are expedient (*r*). This power is entirely new, and the terms are wide enough to include any transaction. The application may be made either by the trustees or any of them, or by any person beneficially interested under the

(*p*) *Ibid.* s. 44.
(*q*) *Ibid.* s. 54.
(*r*) *Ibid.* s. 57 (1).

trusts (*s*). The power does not apply to trustees for the purposes of the Settled Land Act, 1925 (*t*).

It must be remembered that land vested in trustees or a trustee for any beneficiary, unless there is a trust for sale, vested in the beneficiary on the 1st January, 1926. In some cases land may have been conveyed to a nominee without disclosing the true owner, and there will be nothing on the title to show that the ostensible owner is not the real owner. It seems desirable in all cases where there is the slightest cause for suspicion that the true owner may not be the same person as the ostensible owner to inquire whether the person who, on the abstract, appears to have been the owner on the 1st January, 1926, was the true owner. But even if this is answered in the affirmative, the legal estate will have gone to the true owner on the 1st January, 1926, and the ostensible owner will have nothing to convey. The purchaser in such a case will have to rely on the negligence (if any) of the true owner in leaving the documents of title with the ostensible owner in the event of the ostensible owner converting the purchase-money to his own use or exceeding his authority by selling, as the purchaser will not get any legal estate.

Requisitions.

1. *Although the instrument creating the trust authorises the receipt by a sole trustee of capital money, it is necessary for an additional trustee to be appointed in accordance with the Trustee Act,* 1925, *before a title can be made.*

2. *Was the vendor at the commencement of* 1926 *a nominee or trustee for any other person or persons?*

3. *The property was conveyed to the vendor and his late partner as part of the partnership estate, and would appear now to be held in trust for the present members of the firm, unless the vendor is sole owner of the late partnership. If this is suggested, what evidence can be supplied of the vendor's beneficial ownership?*

(*s*) Trustee Act, 1925, s. 57 (3). (*t*) *Ibid.* s. 57 (4).

TRUSTS FOR SALE.

No fundamental alterations have been made in settlements effected by means of a trust for sale. These settlements are sometimes termed "traders' settlements." A trader's settlement is usually effected by two deeds, whereof one conveys the land to trustees upon trust for sale and the other declares the trusts upon which the sale money is to be held; but, though this is the best plan, there is no absolute necessity for two deeds either under the previous law or under the new legislation. It is, however, provided by the Trustee Act, 1925 (*u*), that appointments of new trustees of conveyances on trust for sale on the one hand, and of the settlement of the proceeds of sale on the other hand, shall, subject to any order of the Court, be effected by separate instruments, but in such a manner as to secure that the same persons shall become the trustees of the conveyance on trust for sale as become the trustees of the settlement of the proceeds of sale. It is also provided by the Law of Property Act, 1925 (*x*), that the persons having power to appoint new trustees of a conveyance of land on trust for sale shall be bound to appoint the same persons (if any) who are for the time being trustees of the settlement of the proceeds of sale, but a purchaser shall not be concerned to see whether the proper persons are appointed to be trustees of the conveyance of the land. As it is in accordance with the spirit of the new conveyancing to keep the trusts as far as possible off the title, it is to be hoped that in future all such settlements will be affected by two deeds.

A trust for sale is deemed to be subsisting so far as regards the safety and protection of a purchaser thereunder until the land has been conveyed to or under the direction of the persons interested in the proceeds of sale (*y*). This

(*u*) Sect. 35 (1).
(*x*) Sect. 24.
(*y*) Law of Property Act. 1925, s. 23.

applies no matter what the date of the settlement and whether the trust is express or implied. A power to postpone the sale in the case of every trust for sale is implied unless a contrary intention appears (*z*), and where there is power to postpone the sale the trustees are not to be liable in any way for postponing the sale in the exercise of their discretion for an indefinite period, nor is a purchaser of a legal estate concerned in any case with any directions respecting the postponement of a sale (*a*).

These provisions apply to settlements made both before 1926 and after 1925 (*b*). The question has sometimes arisen in practice whether a trust either to retain or sell land is a trust for sale? In such a case, if the settlement comes into operation after 1925, the trust is to be construed as a trust for sale with a power to postpone (*c*). If the settlement has come into operation before 1926, there is little doubt the trust would now be construed as a trust for sale (*d*). Where the consent of more than two persons is by the disposition made requisite to the execution of a trust for sale of land, then in favour of a purchaser the consent of any two of such persons is to be deemed sufficient (*e*), and where the consent of a person not *sui juris* is required his consent is not in favour of a purchaser requisite (*f*), but the trustees are required to obtain the separate consent of a parent or guardian of an infant or of a committee or receiver (if any) of a lunatic or defective (*g*), and they are, so far as practicable, to give effect to the wishes of the persons beneficially interested in possession or the majority of such persons in value, but a purchaser is not concerned to see that such wishes are complied with (*h*). These provisions apply whether the trust for sale was created before 1926 or after 1925 (*i*).

(*z*) Law of Property Act, 1925, s. 25 (1).
(*a*) *Ibid.* s. 25 (2). (*b*) *Ibid.* s. 25 (3).
(*c*) *Ibid.* s. 25 (4).
(*d*) See *Re Johnson*, (1915) 1 Ch. 435; 84 L. J. Ch. 393; 112 L. T. 935.
(*e*) Law of Property Act, 1925, s. 26 (1). (*f*) *Ibid.* s. 26 (2).
(*g*) *Ibid.* s. 26 (2). (*h*) *Ibid.* s. 26 (3).
(*i*) *Ibid.* s. 26 (4).

A purchaser of a legal estate is in no way concerned with the trusts affecting the proceeds of sale of land subject to a trust for sale (*k*).

After 1925, notwithstanding anything to the contrary in a disposition on trust for sale, capital money must not be paid to or applied by the direction of fewer than two trustees except where the trustee is a trust corporation (*l*). This means the Public Trustee or a corporation either appointed by the Court in any particular case or entitled under rules made under sect. 4, sub-sect. (3) of the Public Trustee Act, 1906, to act as custodian trustee (*m*). *See* "Trust Corporations." This provision does not interfere with the power of a sole personal representative when acting in that capacity to give valid receipts for or direct the application of capital money, nor render it necessary to have more than one trustee where capital money does not arise on a transaction (*n*).

Whether the trust was created before 1926 or after 1925, trustees for sale have after 1925 all the powers of a tenant for life under the Settled Land Act, 1925, and the powers of management given to trustees by sect. 102 of the Settled Land Act, 1925 (*o*), including consequently the power to purchase land with capital moneys. The powers are to be exercised with such consents as would have been required on a sale under the trust for sale, and all capital money arising on any transaction, unless paid or applied for any purpose authorised by the Settled Land Act, 1925, is applicable in the same manner as if arising under the trust for sale (*o*).

The trustees may delegate their powers of management to any person beneficially entitled in possession to the rents and profits. The delegation is to be in writing and in favour of a lessee unless the contrary appears, such writing is sufficient evidence that the person therein named is a

(*k*) *Ibid.* s. 27 (1).
(*l*) *Ibid.* s. 27 (2).
(*m*) *Ibid.* s. 205 (1) (xxviii).
(*n*) *Ibid.* s. 27 (2).
(*o*) *Ibid.* s. 28 (1).

person to whom the powers may be delegated and that the delegation has not been revoked (*p*).

Powers so delegated are to be exercised in the names of the trustees. Where on 1st January, 1926, an order was in force authorising a tenant for life to exercise powers under sect. 7 of the Settled Land Act, 1884, the order is treated as a delegation and the powers are to be exercised in the names of the trustees (*q*).

Subject to any direction to the contrary in the settlement, the net rents and profits, except so far as liable to be set aside as capital money, are payable in like manner as the income of investments representing the purchase-money would be payable.

Where the net proceeds of sale have, under the trusts affecting the same, become absolutely vested in persons of full age in undivided shares (whether or not such shares may be subject to a derivative trust), the trustees for sale may, with the consent of the persons (if any) of full age, not being annuitants, interested in possession in the net rents and profits of the land until sale, partition the land and provide (by way of mortgage or otherwise) for the payment of any equality money and convey the land accordingly. A purchaser is not concerned to see or inquire if any such consent has been given. If a share belongs to a lunatic or defective the consent of his committee or receiver is sufficient, and if a share is vested in an infant the trustees may act on his behalf (*r*). If trustees for sale refuse to sell or exercise their powers of management, delegation or partition, any person interested may apply to the Court for a vesting or other order for giving effect to any proposed transaction (*s*).

Property vested in trustees by way of security which, by reason of foreclosure or otherwise, has become vested in trustees is to be held on trust for sale; but if the mortgage money is capital money arising under the Settled Land

(*p*) Law of Property Act, 1925, s. 29 (1).
(*q*) *Ibid.* s. 29 (4). (*r*) *Ibid.* s. 28. (*s*) *Ibid.* s. 30.

Act, 1925, the trustees, at the request of the tenant for life, must execute such subsidiary vesting deed as would have been required if the land had been purchased with capital money (*t*).

Where a "trader's settlement" or any settlement of personal property authorises an investment in the purchase of land, the land is to be held on trust for sale (*u*).

In certain cases where an equitable interest or power is not subject to a trust for sale or a settlement, the owner of a legal estate is given power to create a trust for sale and thus overreach them (*x*). The trustees in this case must either be two or more individuals approved by the Court or their successors or a trust corporation, which means the Public Trustee or a corporation either appointed by the Court in any particular case to be a trustee or entitled by rules made under sub-sect. (3) of sect. 4 of the Public Trustee Act, 1906, to act as custodian trustee (*y*). The trust for sale will be equally effectual whether created after 1925 or before 1926 and whether created by deed or will.

In addition to legal estates, interests or charges which are entirely outside these provisions and include registered legal charges of Classes A and B, registered local land charges, legal easements and puisne mortgage, there are several equitable interests which cannot be overreached in this manner and are excepted from these provisions (*z*). The excepted equitable interests are:—

(1) Any equitable interest protected by a deposit of documents relating to the legal estate affected.

(2) Restrictive covenants or agreements.

(3) Equitable easements, that is to say, easements, liberties and privileges being only equitable interests.

(4) Estate contracts.

(*t*) *Ibid.* s. 31.
(*u*) *Ibid.* s. 32.
(*x*) *Ibid.* s. 2 (2).
(*y*) *Ibid.* s. 205 (1) (xxviii). See TRUST CORPORATIONS.
(*z*) *Ibid.* s. 2 (3).

(5) Pending actions, writs and orders affecting land, deeds of arrangement and charges for death duties acquired by the Inland Revenue, as to all of these only when registered under the Land Charges Act, 1925 (*a*).

With regard to restrictive covenants, equitable easements and estate contracts created or entered into after 1925, these will in any case be void in favour of a purchaser of a legal estate for money or money's worth unless registered as land charges (*b*), and if created before 1926 they will be void against a purchaser of a legal estate for value without notice.

Estate contracts entered into before 1926 and assigned after 1925 can be registered as land charges (*c*), and if so registered a purchaser will be deemed to have notice of them; but if not registered within one year after assignment (*d*), a purchaser of a legal estate for money or money's worth will take free from them even if he has notice of them (*e*).

In the foregoing paragraphs the apparent effect of the interweaving of the Law of Property Act, 1925, and the Land Charges Act, 1925, has been stated and the wording of these Acts has not been followed.

It will be noticed that the owner of the legal estate can overreach in the manner before stated a limited owner's charge (*f*) which is acquired by paying death duties (*g*), and a general equitable charge (*f*), and an annuity for life or lives or a life rentcharge (*f*), as to all of these even if registered (*f*). A life annuity, even if originally created as a legal rentcharge, becomes a mere equitable interest after 1925 in consequence of the limitation after 1925 of the possible legal estates and interests which can subsist after

(*a*) Law of Property Act, 1925, s. 2 (3).
(*b*) Land Charges Act, 1925, s. 13.
(*c*) *Ibid.* s. 10.
(*d*) Law of Property Act, 1925, s. 198.
(*e*) *Ibid.* s. 199; and Land Charges Act, 1925, s. 13.
(*f*) Law of Property Act, 1925, s. 2 (3) (v).
(*g*) Land Charges Act, 1925, s. 10 (1), Class C.

that date (*h*). Having regard to the wide definition of a settlement in the Settled Land Act, 1925, most annuities will make the land settled land, and the estate owner in that case cannot create a trust for sale to override the annuities.

Requisitions.

1. *The property was held by the late on trust for sale. The purchaser is not, therefore, justified in paying the money to his sole personal representative, and new trustees must accordingly be appointed.*

2. *The vendor cannot dispose of the property on trust for sale to override [the annuity], as the existence of the [annuity] made the land settled land within the meaning of the Settled Land Act,* 1925. *Trustees of the settlement must accordingly be appointed either by all the persons beneficially interested or by the Court and a vesting deed executed.*

UNDIVIDED SHARES.

Whenever land is held in undivided shares a trust for sale arises after 1925. There are in fact after 1925 no interests at law or in equity that can properly be called estates in an undivided share. All the interest a person can have in an undivided share of land is a share of the rents and profits till sold and a share of the proceeds of sale when sold. All land which, on the 1st January, 1925, was held in undivided shares in law or in equity at once became subject to the "statutory trusts" (*i*). These are defined as follows with regard to land:—

"Upon trust to sell the same and to stand possessed of the net proceeds of sale after payment of costs and the net rents and profits until sale after payment of rates, taxes,

(*h*) Law of Property Act, 1925, s. 1.
(*i*) *Ibid.* 1st Schedule, Part IV.

cost of insurance, repairs and other outgoings upon such trusts and subject to such powers and provisions as may be requisite for giving effect to the rights of the persons (including a former incumbrancer of a former undivided share or whose incumbrance is not secured by a legal mortgage) interested in the land" (*k*).

In every case where there is a trust for sale, unless a contrary intention appears, there is always a power to postpone the sale (*l*). This applies to land held upon the statutory trusts (*m*). Trustees for sale have all the powers of a tenant for life and of trustees of a settlement under the Settled Land Act, 1925. They can, therefore, purchase land with the proceeds of sale (unless, of course, the proceeds are immediately distributable and the beneficiaries require them to be distributed), and the land acquired is to be conveyed to the trustees upon trust for sale (*n*). This also applies to land held on the statutory trusts (*o*).

The persons who take the legal estate on the statutory trusts are as follows:—

(1) If the entirety is vested in trustees or personal representatives, the land vests in such trustees or personal representatives (*p*).

(2) If the entirety is vested absolutely and beneficially in not more than four persons of full age free from incumbrances, the land vests in such persons (*q*).

(3) If the entirety is settled land under one and the same settlement, the land vests in the trustees of the settlement, if any, or, if none, in the Public Trustee (*r*).

(4) In any other case the land vests in the Public Trustee (*s*).

(*k*) Law of Property Act, 1925, s. 35.
(*l*) *Ibid.* s. 25 (1), (2). (*m*) *Ibid.* s. 25 (3).
(*n*) *Ibid.* s. 28 (1). (*o*) *Ibid.* s. 28 (5).
(*p*) *Ibid.* 1st Schedule, Part IV., para. 1 (1).
(*q*) *Ibid.* para. 1 (2).
(*r*) *Ibid.* para. 1 (3).
(*s*) *Ibid.* para. 1 (4).

But where the land vests in the Public Trustee, he is not to act unless requested by persons interested in more than a half of the land or the income thereof; and when trustees under the Settled Land Act, 1925, in the case of settled land, or when trustees have been appointed by a majority of the persons interested in the income of the land, the land vests in such trustees (*t*).

Of course, the rights of an incumbrancer over the entirety are unaffected (*u*), and this is also the case where all the undivided shares are vested in the same mortgagees, and the rights of redemption are the same as might have subsisted had the entirety been mortgaged (*x*).

Consents of incumbrancers of undivided shares are in general necessary for appointments of trustees and for a sale, but no purchaser is concerned with them (*y*).

Where land is after 1925 conveyed to any persons in undivided shares and those persons are of full age, the conveyance is to operate as if the land had been conveyed to grantees, or, if there are more than four of them, to the first four on the statutory trusts (*z*). Any settlement by will in undivided shares operates after 1925 as a devise, bequest or appointment to the trustees (if any) of the will for the purposes of the Settled Land Act, 1925, or, if none, to the personal representatives upon the statutory trusts (*a*).

Any disposition purporting to make a settlement of an undivided share after 1925 will only operate as a settlement of a corresponding share of the net proceeds of sale and of the rents and profits until sale of the entirety of land (*b*). If after 1925 settled land is held in trust for persons entitled in possession in undivided shares, the trustees of the settlement may require the estate owner to convey the land

(*t*) *Ibid.* para. 1 (3) and (4).
(*u*) *Ibid.* para. 1 (8).
(*x*) *Ibid.* para. 1 (7).
(*y*) *Ibid.* para. 1 (4) (iii), (9).
(*z*) *Ibid.* s. 34 (2).
(*a*) *Ibid.* s. 34 (3).
(*b*) *Ibid.* s. 34 (4).

to them, and they will hold it on the statutory trusts (*c*). If there are no trustees, presumably the estate owner himself will hold the land on the statutory trusts, but he would have to appoint another trustee to act with him before he could give any receipt for capital money.

Requisitions.

1. *The purchaser cannot take a conveyance from the five vendors who were tenants in common at the end of* 1925 *as he would not get the legal estate, which is now vested in the Public Trustee. It will be necessary for the vendors or a majority of them to appoint at least two trustees and vest the land in such trustees prior to the conveyance to the purchaser.*

2. *Although the property contracted to be sold is vested in trustees, the entirety appears to be settled land held under one and the same settlement, and it seems, therefore, that paragraph* 1 (3), *and not paragraph* 1 (1), *of Part IV. of the First Schedule to the Law of Property Act,* 1925, *must apply, and trustees for the purposes of the Settled Land Act must be appointed by the Court before a title can be made.*

3. *The entirety being vested in a single trustee in trust for persons entitled in undivided shares, it will be necessary for him to appoint another trustee to act with him before the property is conveyed to the purchaser.*

UNIVERSITY AND COLLEGE ESTATES.

The Universities and College Estates Act, 1925, applies to the Universities of Oxford, Cambridge and Durham, and their halls and colleges, Christ Church in Oxford being considered to be a college of Oxford University. It also applies to Winchester and Eton (*d*).

(*c*) Settled Land Act, 1925, s. 36 (1), (2), (3).
(*d*) Universities and College Estates Act, 1925, s. 1.

Universities and colleges have, under the Act, powers of selling and exchanging, but these powers can only be exercised with the consent of the Minister of Agriculture and Fisheries (*e*)

A new power is given of selling for a perpetual or terminating rentcharge (*f*). All capital money must be paid to the Minister (*g*). In the case of a terminating rentcharge the conveyance must distinguish the part attributable to principal from the part attributable to interest, and the former must be paid to the Minister (*h*). Though the powers conferred on universities and colleges are in most respects similar to those conferred on tenants for life, it should be noticed that the length of leases which may be granted is not extended as in the Settled Land Act, 1925, but remains—

(1) in the case of a building lease, ninety-nine years;

(2) in the case of a mining lease, sixty years;

(3) in the case of any other lease, twenty-one years (*i*).

Any fine received on the grant of a lease must be paid to the Minister of Agriculture and Fisheries (*k*).

One-third of the rent of a mining lease is treated as income and two-thirds as capital (*l*).

The following miscellaneous powers are conferred on universities and colleges: Power to grant water rights to statutory bodies (*m*); power to grant land for public and charitable purposes (*n*); power to dedicate streets and open spaces (*o*); power to compromise claims and release (*p*); power to vary leases and grants (*q*); power to apportion rents (*r*); power to effect any transaction with the consent of the Minister of Agriculture (*s*); power to deal separately with surface and minerals with or without rights of work-

(*e*) *Ibid.* s. 2.
(*f*) *Ibid.* s. 3.
(*g*) *Ibid.* s. 5.
(*h*) *Ibid.* s. 3 (2).
(*i*) *Ibid.* s. 6.
(*k*) *Ibid.* s. 7.
(*l*) *Ibid.* s. 12.
(*m*) *Ibid.* s. 14.
(*n*) *Ibid.* s. 15.
(*o*) *Ibid.* s. 16.
(*p*) *Ibid.* s. 17.
(*q*) *Ibid.* s. 18.
(*r*) *Ibid.* s. 19.
(*s*) *Ibid.* s. 21.

ing wayleaves and other easements (*t*); power to grant options (*u*); power to enter into contracts (*x*); and power to execute all necessary deeds and instruments for carrying out an authorised transaction (*y*).

Power is also given to raise money on mortgage with the consent of the Minister of Agriculture and Fisheries for specified purposes (*z*).

Capital money may be invested *inter alia* in the purchase of freehold land or leasehold land having sixty years to run at the time of the investment being made, in extinguishing manorial incidents or redeeming a compensation rentcharge, or in purchase of mines or minerals, or in commuting any additional rent payable on the conversion of perpetually renewable leaseholds into a long term (*a*).

Universities and colleges are given power to sell (*b*) or purchase (*c*) or to transfer gratuitously to an ecclesiastical corporation (*d*) advowsons and rights of perpetual presentation or nomination to benefices.

The foregoing provisions relating to land belonging to a university or college are applicable not only to land held for the general purposes of the university or college, but also land held upon any trusts or for any special endowment or other purposes connected with the university or college (*e*).

The powers conferred by the Act of 1925 do not restrain a university or college from exercising any power of sale, purchase, exchange or borrowing which might have been exercised had the Act not been passed (*f*).

Universities and colleges usually execute deeds by merely affixing their seals thereto without any signature, countersignature, attestation or other verification.

(*t*) Universities and College Estates Act, 1925, s. 22.
(*u*) *Ibid.* s. 23.
(*x*) *Ibid.* s. 24.
(*y*) *Ibid.* s. 25.
(*z*) *Ibid.* ss. 30 and 31.
(*a*) *Ibid.* s. 26.
(*b*) *Ibid.* s. 33.
(*c*) *Ibid.* s. 34.
(*d*) *Ibid.* s. 37.
(*e*) *Ibid.* s. 41.
(*f*) *Ibid.* s. 42.

Requisition.

The consent of the Minister of Agriculture and Fisheries to the sale must be obtained and abstracted and the original handed over on completion.

WILLS.

A will made after 1925 and expressed to be made in contemplation of a marriage is not revoked by the solemnisation of the marriage contemplated (*g*).

A tenant in tail in possession is given power by means of a devise or bequest referring specifically either to the property or to the instrument under which it was acquired or to entailed property generally to dispose of entailed property (*h*). The power does not extend to a tenant in tail who is by statute restrained from barring or defeating his estate tail, or to a tenant in tail after possibility of issue extinct (*i*), but it extends to the owner of a base fee in possession who has power to enlarge the base fee into a fee simple without the concurrence of any other person (*k*).

These powers can only be exercised by a will executed or confirmed or republished by codicil made after 1925 (*l*).

In the case of persons dying after 1925, the following devises and bequests carry the intermediate income except so far as such income or any part thereof may be otherwise disposed of:—

(1) A contingent or future specific devise or bequest.

(2) A contingent residuary devise.

(3) A specific or residuary devise to trustees upon trust for persons whose interests are contingent or executory (*m*).

(*g*) Law of Property Act, 1925, s. 177.
(*h*) *Ibid.* s. 176 (1).
(*i*) *Ibid.* s. 176 (2).
(*k*) *Ibid.* s. 176 (3).
(*l*) *Ibid.* s. 176 (4).
(*m*) *Ibid.* s. 175.

The obvious omissions from the list are accounted for as follows:—

(4) A contingent residuary bequest has always carried the intermediate income.

(5) A future residuary devise or bequest is obviously not intended to carry the intermediate income, otherwise it would have been made immediate.

(6) A specific or residuary bequest to trustees upon trust for persons whose interests are contingent or executory has always carried the intermediate income.

In order to set at rest any possible doubt, it is enacted that the Wills Act, s. 3, shall be deemed always to have authorised a person to dispose of property by will notwithstanding he may have left no heir or next of kin (*n*).

"Locke King's Acts" are repealed and re-enacted in a form which makes them applicable to every kind of property real or personal. If a testator disposes of property which is mortgaged or charged or on which there is a lien for unpaid purchase-money, and does not signify a contrary intention. the property is primarily liable to the charge, and every part thereof according to its value is to bear a proportionate part of the charge (*o*). The contrary intention is not signified merely by a direction for payment of debts or a charge of debts upon the testator's personal estate, residuary real and personal estate, or residuary real estate, unless such intention is further signified by words expressly or by necessary implication referring to all or some part of the charge (*p*).

In accordance with sect. 179 of the Law of Property Act, 1925, the Lord Chancellor has prescribed and published forms for incorporation in wills known as the Statutory Will Forms, 1925. There are ten forms, six of which may be applied either generally or by specific reference, and four of which can only be applied by specific reference.

(*n*) Law of Property Act, 1925, s. 178.
(*o*) Administration of Estates Act, 1925, s. 35 (1).
(*p*) *Ibid.* s. 35 (2).

Their employment would considerably shorten wills and codicils, but it seems doubtful if they will be much used.

Intestacy.

On the death after 1925 of a person intestate as to any real or personal estate, such estate is to be held by his personal representatives as to real estate upon trust to sell the same, and as to personal estate upon trust to call in, sell and convert into money such part as may not consist of money, with power to postpone the sale and conversion, and so that any reversionary interest be not sold until it falls into possession, and so that unless required for purposes of administration owing to the want of other assets "personal chattels" shall be not sold except for special reason (*q*).

"Personal chattels" mean carriages, horses, stable furniture and effects (not used for business purposes), motor cars and accessories (not used for business purposes), garden effects, domestic animals, plate, plated articles, linen, china, glass, books, pictures, prints, furniture, jewellery, articles of household or personal use or ornament, musical and scientific instruments and apparatus, wines, liquors and consumable stores, but do not include any chattels used for business purposes nor money or securities for money (*r*).

Out of the net money to arise from such sale and conversion and out of the ready money of the deceased (so far as not disposed of by his will, if any), the personal representative is to pay all such funeral and testamentary and administration expenses as are properly payable thereout and set aside a fund for any pecuniary legacies bequeathed by the will (if any) of the deceased (*s*).

The residue of the said money and any investments for the time being representing the same, including (but without prejudice to the trust for sale) any part of the estate of the deceased which may be retained unsold and is not required for the administration purposes aforesaid, is called in the Act "the residuary estate of the intestate" (*t*). It

(*q*) *Ibid.* s. 33 (1).
(*r*) *Ibid.* s. 55 (1) (x).
(*s*) *Ibid.* s. 33 (2).
(*t*) *Ibid.* s. 33 (4).

should be noticed that the term "intestate" in the Act includes a person who leaves a will, but dies intestate as to some beneficial interest in his real or personal estate (*u*).

Except as hereinafter mentioned, all existing rules and canons of descent or of a personal inheritance, whether operating by general law or special custom, tenancy by curtesy, dower and freebench, and every other estate or interest of a wife in real estate as to which her husband dies intestate (including, for instance, quarantine), are abolished (*x*). A wife married on or before the 1st January, 1834, had an indefeasible right to dower, but it is safe to say that in no case have any married couple both survived their marriage for ninety-two years. By the custom of some manors a wife had an indefeasible right to freebench, and it is accordingly provided that where a right to freebench or other like right has attached before 1926 which cannot be barred by a testamentary disposition made by the husband, such right, unless released, shall remain in force as an equitable interest (*y*). Escheat is also abolished (*z*).

The residuary estate of the intestate is distributed as follows:—

(1) The husband or wife, if surviving the deceased, takes the personal chattels (*a*).

(2) The husband or wife, if surviving the deceased, takes 1,000*l*. with interest at 5 per cent. from death until payment or appropriation (*b*).

(3) One-half of the residue is held in trust for the surviving husband or wife for life (*c*).

(4) Subject to the interests of any surviving husband or wife, the issue living at the death of the deceased who attain the age of twenty-one years or marry take the whole estate if more than one in

(*u*) Administration of Estates Act, 1925, s. 33 (4).
(*x*) *Ibid.* s. 45.
(*y*) *Ibid.* s. 43.
(*z*) *Ibid.* s. 45 (1) (d).
(*a*) *Ibid.* s. 46 (1) (i).
(*b*) *Ibid.* s. 46 (1) (i).
(*c*) *Ibid.* s. 46 (1) (i) (b).

equal shares *per stirpes* (*d*). Money or property advanced by the deceased to any child (*e*) and any beneficial interest acquired by any issue of the deceased under his will (*f*) must be brought into hotchpot by any issue taking the residue, the value being reckoned as at death (*e*).

(5) On default or failure of the trusts for issue during the life of the surviving husband or wife, the surviving husband or wife takes the other half of the residue for life (*g*).

Subject to the rights of the surviving husband, wife and issue, the following relations take in turn:—

(6) The parents of the deceased (*h*).

(7) The brothers and sisters of the whole blood and their issue.

(8) The brothers and sisters of the half blood and their issue.

(9) The grandparents of the deceased.

(10) The uncles and aunts of the whole blood and their issue.

(11) The uncles and aunts of the half blood and their issue.

(12) The surviving husband or wife (*i*).

Failing these relations:—

(13) The Crown or Duchy of Lancaster or Duke of Cornwall, as the case may be, takes as *bona vacantia* (*k*).

In the case of brothers and sisters and their issue and uncles and aunts and their issue, the interest only becomes vested on the beneficiary attaining twenty-one or marrying, and the distribution is in each case *per stirpes* through all degrees and so that no issue take whose parent is living

(*d*) *Ibid.* s. 46 (1) (i) (b) and (ii).
(*e*) *Ibid.* s. 47 (1) (iii).
(*f*) *Ibid.* s. 49 (a).
(*g*) *Ibid.* s. 46 (1) (ii).
(*h*) *Ibid.* s. 46 (1) (iii) and (iv).
(*i*) *Ibid.* s. 46 (1) (v).
(*k*) *Ibid.* s. 46 (1) (vi).

and capable of taking (*l*). The statutory power of advancement and the statutory provisions relating to maintenance apply, but when an infant marries the infant is entitled to give valid receipts for the income of his or her share or interest (*m*).

In each case where the trusts fail the residuary estate of the intestate and all statutory accumulations, if any, of the income thereof, or so much as may not have been applied under the powers of advancement or maintenance, devolve on the persons next entitled (*n*), and all accumulations are to be treated as an accretion to the capital of the property and as one fund with the capital (*o*).

References to any Statutes of Distribution in an instrument *inter vivos* made or in a will coming into operation after 1925 are to be construed as references to these provisions, and references in any such instrument or will to statutory next of kin are to be construed, unless the context otherwise requires, as referring to the persons who would take on an intestacy under these provisions (*p*).

Trusts declared in an instrument *inter vivos* made or in a will coming into operation before 1926 are to be construed by reference to the statutes (other than the Intestates' Estates Act, 1890) relating to the distribution of effects of intestates which were in force before the commencement of 1926 (*q*).

These provisions do not apply to the beneficial interest in freehold property of a lunatic living and of full age on 1st January, 1926, and unable by reason of his incapacity to make a will, who dies intestate in respect of such interest without having recovered his testamentary capacity or without his committee or receiver having been discharged. In such a case such interest devolves in accordance with the general law in force before 1926 (*r*).

(*l*) Administration of Estates Act, 1925, s. 47 (1) and (3).
(*m*) *Ibid.* s. 47 (1) (ii).
(*n*) *Ibid.* s. 47 (2).
(*o*) Trustee Act, 1923, s. 31 (2) (ii).
(*p*) Administration of Estates Act, 1925, s. 50 (1).
(*q*) *Ibid.* s. 50 (2).
(*r*) *Ibid.* s. 51 (2).

An infant who dies without having been married after the commencement of 1926 equitably entitled under a settlement (including a will) to a vested estate in fee simple or absolute interest in freehold land or in any property settled to devolve therewith or as freehold land is deemed to have an entailed interest (*s*). In such cases a soldier or sailor in active service or a marine or seaman at sea is deprived of the privilege of disposing of such property which he previously enjoyed although an infant (*t*).

The devolution of an entailed interest which is not disposed of by will is not affected (*u*), and an heir may take by purchase if an estate is expressly limited to him (*x*).

Except when purchasing an interest under a will or intestacy, a purchaser will not be concerned in any way with wills coming into operation after 1925.

The will only takes effect in equity, and the probate and the assent in writing of the personal representative take the place of the will. In general wills of persons dying after 1925 should neither be abstracted nor recited. In that case, even the death of a testator or intestate need not always be abstracted or recited, as the probate or letters of administration will be conveyancing proof of the death, and the date of the death may be of no importance. Such questions as "What children a testator left surviving him?" or "How does the vendor propose to establish that William Henry Smith was the person referred to by the testator as his nephew Harry?" will all become unnecessary where the testator died after 1925. The purchaser of a legal estate need not go behind the assent, and if the assent is made to the wrong person it is no concern of the purchaser's (*y*).

(*s*) *Ibid.* s. 51 (3).
(*t*) Wills (Soldiers and Sailors) Act, 1918.
(*u*) Administration of Estates Act, 1925, s. 51 (4).
(*x*) *Ibid.* s. 51 (1).
(*y*) *Ibid.* s. 36 (7).

Requisitions.

1. *Though the vendor is sole personal representative of the testator, he appears to be absolutely entitled under the will. He should, therefore, execute an assent in his own favour and sell as beneficial owner, as the purchaser is entitled to the proper covenants for title.*

2. *The date of the death of the testator must be stated, as in this case it is material to know whether it occurred before* 1926 *or after* 1925.

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